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REPORTS

AND

PLEADINGS

OF

CASES in Assise,

FOR

Offices, Nusances, Lands and Tenements;

SHEWING

The Manner of Proceeding in *Assises of Novel Disseisin*, from the Original to the Judgment and Execution; as well where the Demandant and Tenant appear, as where either of them makes Default: Nothing of this Kind being ever before published.

WITH

Observations on every Case, very necessary for all Clerks of Assise, Attorneys, &c.

To which are added,

Writs of Assise, &c.

By JOHN LILLY Gent. Author of the *Practical Conveyancer*.

To which is added, by W. M. Nelson Esq.^r

A prefatory Discourse, shewing the Nature of this Action, and Reasons for putting it in practice.

In the SAVOY: Printed by Eliz. Nutt, and R. Dossing, Assigns of Edward Sayer Esq; for John Hook, at the Flower-de-luce against St. Dunstan's Church, and Tho. Woodward, at the Inner-Temple-Gate in Fleet-street. MDCCXIX.

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REPORTS

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OF

CASES IN ALL

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OF THE COURT OF COMMONS, LANDS AND TOWNSHIP

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PREFACE.

AMongst all the antiquated Writs in the *Register*, which were formerly brought to recover the Possession or Property of Lands, there seems the least Reason for discontinuing the Writ of *Assise of Novel Disseisin*; but something may be offered to shew why most of the rest have been disused, even before the *Tenures* were altered by any Law or Statute whatsoever.

I shall begin with the Writ of *Right Patent*, which was never of any general Use, but adapted to particular Persons and Things; it could not be brought for *Advowsons*, or *Right of Common*, but only for Lands and Tenements; and in those the Tenant must have a supposed

posed *Freehold* at least, and the Demandant a *Fee-Simple*; by which I do not mean *Directum Dominium*, but a Fee which he held of some superior Lord, in whose Court he was bound to bring this Writ, and no where else; for if the Sheriff was at any Time commanded to summon the Tenant to appear *coram Justitiariis apud Westm'*, the Reason is given in the Writ it self, *Quia A. B. capitalis Dominus feodi nobis inde remisit Curiam suam.*

There were so many Delays in these Courts, that Justice could not be obtained without a great Expence of Time and Money, and sometimes not at all; for the Lord would not hold any Court; and then there must be an *Alias* and *Pluries*, and at last an *Attachment* against him; and when the Court was kept, then either he or his Steward would not do Right to the Parties; and as often as that happened, they removed their Causes by *Tolts*, *Pone's*, and *Recordare's*.

The same Reason may be given why the Writ *De rationabili parte*, &c. is refused: It was always directed to the *Lord*, of whom the Lands were held, and it must be brought between Privies in Blood, and for Lands in *Fee-simple*; and if the Defendant did not appear on the Day given in the Original, then Process issued against him in the Nature of a *Grand Cape*, which was for the King to seize his Lands; and if he did not appear upon the Return of that Process, then the Lands were forfeited; if he did appear on the first Summons, and afterwards made Default, then a *Petit Cape* was awarded against him; which was a Process of the same Nature with the other, only the first always issued upon a Default before Appearance, and the other after.

Assises of Darrein Presentment, and *Writs of Right of Advowson*, are seldom or ever brought, because one would not lie but where the Plaintiff, or some of his Ancestors, had present-
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ed to the Church ; and the other could not be brought but where the Plaintiff had a Fee-simple in the Advowson ; therefore all these Writs, and many more which I could name, were laid aside, as being of no general Use, and attended with frequent Delays in the Prosecution ; and *Ejectments* and *Quare Impeditis* were substituted in their Room, as being more expeditious Actions, and of larger Extent ; for these may be brought by Persons who have no Fee-simple in the Lands, and who never presented to the Church, as well as by those who did.

In former Days, where any *Commons* were surcharged, the Course was to enter a *Plaint* before the Sheriff in the County-Court, who thereupon made a Warrant against the Defendant to appear ; which if he did, and pleaded nothing in Bar, then the Plaintiff had a Writ *De admesuratione pasturae*, or *De secunda superoneratione*, as the Case required ; and this was directed to the Sheriff, commanding him

him *admensurari facere pasturam*, that is, the whole Commonable Lands, which he would often neglect or delay to do, and then the Process against him was by *Alias*, *Pluries*, and *Attachment*.

So where a Man had Lands in Fee-simple, and another claiming *Common* in them, put in his Cattle to depasture, the usual Remedy was to bring a *Quo jure, &c.* in which the Process was *Summons*, *Attachment*, and *Distress*; and there were always fifteen Days between the *Teste* and Return of those Writs; then if the Defendant appeared, and afterwards made Default, a *Grand Distress* issued against him, instead of a *Petit Cape*, in which the Process was by *Venire facias*, *Habeas corpora*, and then a *Distress infinite*; which is called the *Grand Distress*, because all his Goods and Chattels were to be distrained.

So likewise, if the Defendant did not repair his Fences, there formerly
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issued a Writ against him *de Curia claudenda*, in which the Process was by *Summons, Attachment, and Distress*; and if he made Default after Appearance, then the Plaintiff might have a *Distingas*, in the Nature of a *Petit Cape*; and if he did not appear on the Return of the Writ, then, and not before, he might have a Writ of Enquiry of the Damages.

Now it is probable that all those Writs were disused, and all other of the like Nature, by Reason such dilatory Proceedings were found very Inconvenient to Suitors; and a new and quicker Remedy was invented, which was by Actions of *Trespass* framed on particular Cases, as they should happen; which are now commonly called *Actions on the Case*.

There are other Writs which have been a long Time discontinued, and can never be put in Practice again, because the Matter upon which they are founded is quite taken away; and

those are the Writs *De nativo habendo*, by which the Lord claimed an Inheritance in his *Villain*, and *De libertate probanda*, which was in Nature of a *Supersedeas* to the other; for those were Actions frequently brought before the Judges, and were not *Vicon-tiel*, as the Lawyers call them, (*i. e.*) they were never determined by the Sheriff in the County-Court; and this appears by the last of these Writs, by which the Sheriff is commanded *quod ponat loquelam coram Justitiariis, &c.* and the Reason is given in the Writ, *quia hujusmodi probatio*, that is, the Proof of his being a Freeman, *non ad te* (*viz.* to the Sheriff) *pertinet capiend*; but now we are all a free People, and there is no such Tenure as *Villenage* amongst us.

The Writs of Formedon in the *Discender*, *Reverter*, or *Remainder*, are seldom used either by the Issue of the Tenant in Tail, or by the Donor or his Heirs, after the Estate-tail spent, or by the Remainder-Man in Tail, after

after the Death of the Tenant in Tail, without Issue; for there were so many intricate Forms of those Writs, and so much Nicety, in the Pleadings, that if the Demandant did not mention every one who was seized by Force of the Entail, or if he made the least Mistake in the Pedigree, it was fatal to him.

I could here make a long Detail by running thro' almost every Writ in the Register and Fitzherbert, and shew that for these and some other Reasons most of them are now quite out of Use; but this would be too long for a Preface, therefore I must refer the Reader to another, (*i. e.*) to the Preface to my Lord Rolle's *Abridgment*, where he will find more Observations of this Nature.

But in *Affises of Novel Disseisin* there were none of these Inconveniencies: It is a very comprehensive Action, extending as well to Tenants for Life and in Tail, as to Tenants in Fee-simple,

simple, who are disseised ; and it was usually brought in the King's Courts, where the Proceedings are not clogged with so many Delays as in these inferior Courts, of particular Lords, and of the Sheriff himself.

And this Action is so far from being dilatory, that it is commonly called *Festinum Remedium*, not in respect of any Precipitancy in the Proceedings, but because Justice and Right are sooner obtained than in any other Action whatsoever ; for the Defendant shall not be *essoined*, nor *cast a Protection*, (*i. e.*) no Excuse shall be admitted ; nor shall the King himself by his Prerogative exempt him from Appearance ; neither shall he vouch a Stranger, or another be *received* to defend his Title, if he should make Default ; for *Receipt* doth not lie in an *Affise*, &c. (*i. e.*) a third Person shall not be *received* to plead with the Demandant ; all which are Dilatories allowed in other Actions.

It is true, Imparlances may be seen in the following Precedents, not from one Term to another, but from Hour to Hour, and that in the same Day, or at furthest to the next Day after; and general Demurrers do not depend a whole Term, for in such Cases the Judgment is given at the same Assises, and the Recognitors proceed to give a Verdict, which if for the Demandant, he hath Judgment and Execution immediately; and by this Means several Inconveniencies are prevented, which frequently happen in other Actions by the Death of either Party pending the Action, or between the Day of *Nisi prius*, and Day in *Bank*, or before the Plaintiff can have any Effect of the Verdict, which is not till four Days after the Beginning of the next Term.

Besides, the Juries in other Actions are returned to try a certain Issue, and when they have given a Verdict, let it be perfect or not, if the Court record it, they are discharged, and shall

never try the same Issue upon a new *Nisi prius*; for if the Verdict is imperfect, a *Venire facias de novo* shall be awarded.

But it is not so in an *Affise*; for if the Verdict should be imperfect, there shall be no *Venire facias de novo*, for that would be too dilatory; but there shall be a *Certificate* of the *Affise*, (*i. e.*) there shall be a Writ directed to the Sheriff, to summon the Party for whom the Verdict was given, and likewise the same Recognitors to appear before the Judges at a certain Time and Place, that they may be better *certified* whether all Points of the *Affise* were duly examined; and in such Case they are to inquire into, and report the Defects of their former Verdict; and the Reason is, because they are not returned to try a certain Issue, but only *videre tene-mentum*, as it appeareth by the Original Writ of *Affise*, upon which they are returned, and therefore they are
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not discharged till a perfect Verdict is given.

Now because this Matter will more plainly appear by a very old Record in the Reign of *Ed. 2.* and is a very remarkable Case, I shall transcribe it.

*Sussex, ff. Præceptum est Vic', &c. quod venire faciat Furatores qui in Assisa novæ disseisinæ dubium fecerunt Sacramentum tangens quandam Agnetam quam dixerunt esse filiam Simonis de Punde, & non dixerunt esse hæredem Et in eo quod dixerunt quod Matilda quæ fuit Mater Agnetæ fuit Uxor Simonis & non dixerunt utrum patria habebat eam ut uxorem ejus. Qui Furatores dicunt quod prædict' Simon semper tenuit dictam Matildam ut uxorem suam & nunquam eam desponsavit, sed dicunt quod prædict' Simon aliquo tempore captus fuit per amicos Matildæ in Camera fornicando cum ipsa per quod compellabatur unum de tribus facere, vel ipsam affidare, vel vitam suam amittere, vel ipsam **RETRO OSCULARE**, ita quod ipse Simon dedit fidem suam præd' Matildæ, quod ipsam desponsare voluit sed nunquam alio modo*

do desponsavit, Ideo præd' Matilda de Kingsford soror præd' Simonis recepit Seisinam de uno Mesuagio, &c. in Thipley, &c.

Here it may be observed, that Agnes, the Daughter of Simon de Punde, had disseised his Sister, Maud Kingsford, of an House and Lands in Thipley; for which she brought an Assise, and that the Recognitors gave a Special Verdict, the Substance whereof was, That Agnes was the Daughter of the said Simon, and that one Maud was his Wife, and Mother of Agnes, which Verdict was very imperfect; and therefore the Record tells us, that the Jury made *dubium Sacramentum*, because they found that Agnes was the Daughter, but did not say the Heir of Simon; for she might be his Daughter, (as it is probable she was) but not his Heir; and they likewise found that Maud, the Mother of Agnes, was the Wife of Simon, but did not find that she was generally reputed to be so amongst the Neighbours, therefore
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they were summoned again ; and then they mended their Verdict, by finding that *Simon* kept the said *Maud* as his Wife, and never married her, but that he was taken in her Chamber by some of her Friends, in the very Act of Love, for which he was enjoined to do one of the three Things mentioned in the Record; and 'tis to be wish'd we had been told which of them he chose to do ; it is plain he did not chuse the first, which was to marry the Woman (for in that Sense *assidare mulierem* is mentioned in *Bracton*) and I believe he was not hanged for his Incontinency, therefore he must do the third Thing.

But to return ; the Reason why Ejectments are more common than Assises may be, because since the *Statutes of Jointures and Wills*, many Estates are held by Lease; for soon after those Statutes were made, several Persons began to carve long Terms for Years out of their Inheritances, to make Provision for their younger Children, and

when Differences did arise, either about the Property or Possession of such Estates, an Ejectment was then, as it is still, the proper Action, because an *Affise* would not lie for a *Leasehold*.

Neither would an *Ejectment* lie for a *Freehold*; but yet a Way was invented to bring it in, and that is by making it a fictitious Action; and because it should have a Resemblance to the original Intention of the Writ, it is founded on a *supposed Lease*, made by the Owner of the Freehold to an imaginary Plaintiff, and a feigned Entry and *Ouster* by a nominal Defendant, all which, the true Defendant is bound by a Rule of Court to confess; and so by these Suppositions, the real Action of *Affise* is almost jostled out of *Westminster-Hall*.

No Man will say that it ought to be discontinued, because it is *festinum remedium*; for as we are told by the wisest of Men, that Judgment may be turned into Wormwood, so it is
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very certain that Justice may be turned into Vinegar by Delays.

I have heard it objected that the *View* by the Recognitors is not only chargeable but insignificant, because it is impossible for them to know any Thing of the Demandant's Title (especially to an Office) by looking upon the *Post* where the Defendant sits to execute it.

This seems to me rather a Jest than an Objection; but admitting it to be true, yet the Dispatch in this Action doth abundantly compensate for the Charge of the *View*, neither is that insignificant, as may appear by what follows :

§. At the Time of the supposed Conquest, and many Years afterwards, the Recognitors impanelled on an Assise were such, and only such, who did actually know the Lands, or Thing in Demand, and who was the Possessor thereof, and for how long Time ;
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and therefore, if any of them would make Oath that he did not know those Things, he was set aside, and others returned who did.

Now this Knowledge was not acquired by perusing the Deeds or Evidences of the Title, or by having them read, but by frequently viewing the Lands, and taking Notice which of their Neighbours was in the peaceable Possession thereof; and when any Dispute was made about it, the Writ commanded the Sheriff that he should cause the Jury *Videre tenementum*, and it tells us for what Purpose, *viz.* That they might be prepared, *Facere recognitionem*, which is a Knowledge arising by recollecting of Things upon a fresh View of the Object, and by which many material Circumstances might easily occur to their Memories, especially since the Disseisin must be within thirty Years before the Assise brought.

Neither is there any Thing which imprints in our Minds a clearer Knowledge of Things and Persons than our *Sight*; and this may be the Reason why, in all Judgments given for the Plaintiff, the Words are, *Super quo visis Præmissis*, &c. (*i. e.*) the Premisses are as fully and plainly understood, as if they had been actually seen by the Court.

It hath been likewise objected that the *Motley* Proceedings in this Action being a Compound of barbarous *Latin* and *French*, are a Badge of our Slavery ever since the Subversion of our Laws by the *Normans*, and their introducing new Tenures here, and for that Reason they ought not to be used.

The same Objection may be made to writing Law Books in *French*, tho' neither of them are Marks of our Subjection to the *Normans*; or if they were, they are now worn out, and therefore can be of no Manner of Consequence to us.

But what if the Pleading in *French* is a Mark of our Subjection to the *Normans*? Have we not regain'd our Liberties since that Time? Or must we still be apprehensive that we shall be subject to them again? I believe my Countrymen are no more afraid of it than the *Flemings* were of the Duke of *Alva's Effigies* in the last Age, which was purposely stamped on all earthen Bottles, that in the midst of their Mirth they might not forget their late Subjection to that cruel Governor; but yet they drank on, tho' every fresh Bottle produced his terrible Whiskers and long Beard.

But to be serious, the true Reason why Pleadings were in *French* must be sought a little higher than the *Normans*, and therefore it cannot be a Mark of our Subjection to them; for we must look back into the Reign of *Edward* the Confessor, and we shall find that Prince lived several Years in *Normandy*, and seemed to have a better Opinion of the *French* Tongue than his own,

own, because he published his Laws in old *Norman French*; and it is probable that about that Time the *English* began to imitate the *French Customs and Manners*; so that it was accounted good Breeding to speak in their Language, and an Accomplishment to mimick them in their Gesticulations.

In this State King *William* found this Nation after the Death of the Confessor; it is true, he made a Law, *That all Pleadings and Arguments, both at Bar and on the Bench, should be in French*; but that would be no Proof of any slavish Design, totally to abolish the noble *English Language*, and to introduce the *French Tongue*; for it proves just the contrary, because it was not a general Law to be observed throughout the Nation, but confined only to the Courts in *Westminster-Hall*.

And what if a Law should now be made that all the Pleadings in those Courts should be in *Latin*? Will it follow

follow from thence that this must be a *slavish Design to extinguish the English Tongue, and to introduce the Latin*? Certainly it could not; tho' such an Inference would be much stronger now, than it could be then, because of the Multitude of Causes which are now brought in those Courts; whereas in the *Norman Reigns* there were very few tried there for Differences only between the King's Tenants *in capite*, (*i. e.*) between those who held Lands of him immediately, as of his Crown; and some Controversies arising upon Customs incident to that Tenure; and no other Causes were heard or determined in *Curia Regis*, now called the *King's Bench*: It is true, there are some removed thither out of inferior Courts, but those were very few, and Causes of great Moment; the *Common Pleas*, in those Days, followed the King's Court till it was otherwise settled by *Magna Charta*, and Debts only due to the King, and Matters concerning his Lands and Revenues were tried in the Court of *Exchequer*; and

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as for the *Chancery*, I do not find that it was used as a *Court of Equity* till the Reign of *Henry IV.* All other Causes were tried either in the Sheriff's Court, or other inferior Courts ; for all the great Men in those Days had Power to administer Justice *inter homines suos*, (*i. e.*) between their Tenants, and within their own Manors ; and for that Purpose they held Courts, in which they determined all Controversies arising upon *Contracts*, *Covenants*, or *Trespases*, made or done within their respective Jurisdictions ; and not being contented to execute their Power, they by degrees assumed a Privilege to attach People by their Goods to answer Suits *in those Courts*, for Debts and Trespases arising out of their *Franchises* ; and this was upon a false Suggestion that such Actions were Transitory in their Nature ; and by this Means the King lost many Fines and Amercements, which otherwise would have been due to him upon Judgments in such Actions, if they had been tried in his own Courts ; and therefore

therefore the Statute *W. 1.* was made, and by the 35th Chapter, *All Persons are prohibited to arrest any within a Liberty, and who holds nothing thereof, for Contracts, Covenants, or Trespasses, made or done out of such Liberty, on Pain to pay double Damages to the Party grieved, and a Fine to the King.*

Neither could *that Law, appointing all Pleadings to be in French*, be made purposely to introduce the *French Tongue* even into those Courts at *Westminster*, because, during all the *Norman Reigns*, and long afterwards, all the *Chancellors, Judges, and Lawyers* too were *Normans*; so that to argue at that Time in *English*, would not only have been an Affront to the Judges, it being a Language which they did not understand, but likewise to the King himself, who frequently sat with the Chief Justice in *Curia Regis*; and in that Respect it would have been worse than if a *Welch Lawyer* should move the Court, now in the ancient Language of the Britons, to
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excuse the Appearance of his Client, because he lies sick in *Wales* : I believe both the Bar and the Bench would think he was rather casting a Figure than an *Essoin* ; and tho' he might have prepared a very Masculine Speech, with all the Purity of *Diction* in that guttural Tongue, yet he would certainly be censured by the Court for executing such Delicacies there.

So that the Reason of making the *Law* that all *Pleadings* should be in French, seems to be to discourage the *English* from the Study of the Common Law, which was published in *French* by the Confessor, and understood only by them ; and if any *Englishman*, with Pains and Difficulty, arrived to a Degree of Knowledge therein, equal, if not superior to any of the *Normans* ; yet they were always better heard in those Courts, and often favoured by the King himself, who perceiving what great Possessions were given by Lawyers, was
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willing the same should be shared amongst his *Normans*, so that very few *Englishmen* would struggle against such Discouragements.

As to those old Books, such as the *Mirror* and *Britton*, tho' written in *French*, yet that could be no Mark of our Subjection to the *Normans*, because they are not writ in the *Norman French*, but in a Language very differing from that in which the Confessor's Laws were published; neither could the Writing the *Year-Books*, or any other old Reports in *French*, proceed from the supposed *Norman Conquest*, because the first of those Reports was about the Beginning of the Reign of *Ed. 1.* which was above 200 Years after the *Norman Invasion*, and we had no Dominions then in *France*, for those were all retaken from us in the Reign of King *John*, and almost 100 Years before any *Law-Report* was extant.

Our first *Law-Books* were published in *Latin*; this appears by *Glanvil*, who

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was Chief Justice in the Reign of *H. 2.* and by *Bracton* and *Fleta*, and others; and so were all the Charters and Laws till the Statute of *Westm. 1.* which was above 200 Years after the first *Norman* Reign; and the very Laws of that King himself were written in *Latin*, as may be seen in the Collections thereof, by *Sir Henry Spelman* and *Mr. Lambard*; so that he seems far from any slavish Design to introduce the *French Language* here.

Neither did he make any Alteration in our Municipal Laws; for those concerning *Descents*, and the Manner of conveying Estates by *Feoffments with Livery and Seisin*, *Trials by Juries*, *Outlawries*, and many other Branches of the Law, were the same then as now; this appears by the *Abbot Ingulphus*, who published the *Confessor's Laws*, and which King *William* swore upon the Relicks of *St. Alban* to observe and confirm; this likewise was the Opinion of a very learned and honourable Historian, I mean my Lord *Clarendon*, who, in his * *Survey on the Leviathan*; tells

* *Cap. 24.*
pag. 110.

tells us, that those Laws and Customs which were before the Conquest, are the same which this Kingdom hath been governed by ever since, to this very Day.

Neither can I find that any Alterations were made in the Proceedings in an *Affise of Novel Disseisin*; for if there had, it could not have escaped the Observation of those old Lawyers before-mentioned, whose Books are full of them; and some, after the Reign of *Ed. 3.* when Pleading was at Perfection, as my Lord *Coke* calls it (*i. e.*) when so many intricate Exceptions were taken to Forms, that Matter and Substance were almost neglected.

But in this Action the Pleadings continued the same; there was no Room to draw them out in Length by any Special Matter, as in other Actions; the Parties were soon at an Issue; and as the Demandant had a certain Benefit by the Dispatch of his Cause, so the Tenant had likewise an
apparent

apparent Advantage in this Action; for tho' Pleading was at that Perfection, he was sure never to be caught by a faulty Demurrer; for the Judgment in such Case is, *Quod capiatur Affisa*; and thereupon the Recognitors immediately proceed to try the Cause, without any further Answer; so that by this Means he hath the same Benefit of a legal Trial by a Jury, as if he had pleaded an issuable Plea.

To all which may be added, that the Forms of Pleading in an *Affise*, seem more pertinent to the subject Matter than the Forms in any other Action whatsoever; and this, my Lord Coke tells us, very much conduces to the true Understanding the Law, whereas by the Forms in other Pleadings, one would think that *barbarous Words* and *false Latin* did so too; which are more common even amongst the most skilful Clerks in *Westminster-Hall*, than in the meanest Performances of a *Westminster Scholar*.

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It is true, Words are but Pictures of Things, and he who employs himself about the Embellishments of Language, seems to be in love with the Picture, and to neglect the Life; but the Common Law pleaded is so little concerned with such Ornaments, that he takes the Liberty to reject very apt and proper Words, on purpose to express the Matter in the most absurd and barbarous Terms which can be invented; for I would fain know why *Janitor* is not as significant a Word to express a *Door-keeper*, as *Ostii servator*? And why *nunc* & *olim* do not as properly signify *now* and *heretofore*, as this Regiment of Adverbs *diu antea*, & *continue extunc, hucusque postea*? Where *postea* must bring up the Rear, for no other Reason, but because it is a favourite Word with the Clerks, which they exemplify in *Capitals* almost in every Record.

I admit that Forms are very necessary, where they relate to the subject Matter, but as ridiculous where they

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do not ; as for instance, the Form of a Declaration in *Assault and Battery* is *Quare vi & armis*, (the Defendant) *in & super*, (the Plaintiff) *insultum fecit & baculis gladiis & cultellis verberavit & vulneravit, &c.* The very same Term was once used by a skilful Attorney in an Action against the Defendant for assaulting the Plaintiff's Wife, who voluntarily departed from her Husband, and lived with the Defendant in Adultery : I remember great Advice was taken about this Declaration, and that it was resolved by all the Counsel for the Plaintiff, that the criminal Familiarity of the Defendant was very properly express'd by those Words, *in & super* (the Plaintiff's Wife) *insultum fecit* ; but it was strenuously objected against the Words *Vi & armis*, because there was an apparent Proof of the Consent and Compliance of the Woman, and that *Baculi gladii & cultelli* were improper Instruments to carry on an amorous Correspondence ; after a long Debate, a very grave Lawyer (whose Opinion was to conclude the rest) consented to lay down the
Cudgels,

Cudgels, but would not leave out *Vi & Armis*; and his Reason was, because they must keep up to the ancient and approved Forms.

Having thus shewed why several Writs and Actions are disused, and why an *Affise* should not, and answered such Objections which are commonly made why it should, I am now to give some Account of the following Pleadings and Cases, which were certainly collected by a late eminent Clerk and Principal of *Clifford's-Inn*, in most of which he was particularly concerned.

It is probable that both the Pleadings and the Method of Proceeding in an *Affise of Novel Disseisin*, which was never yet published in any Book whatsoever, were for that Reason kept by him for his private Use, because they were not put in that usual correct Form as some of his Writings which have been sent to the Press.

Therefore the Manuscript falling into my Hands since his Death, I have disposed

disposed the Matter into such Order as it is now published, knowing that what properly came from such a skilful Clerk must be very useful to others, because he had not only Diligence to collect, but Judgment to discern what was beneficial and instructive both to himself and others of his Profession.

And because most of those Pleadings are concerning Offices, I have added, by Way of *Appendix*, one Precedent of an Assise for Lands, as it is reported by my Lord *Coke*; in which there is greater Variety of Pleadings than in any other I could find in all the Books of Entries; I have likewise made some Additions and Observations thro' the Whole; which, tho' very short of what might have been expected from him, yet may serve in some Measure to the clearer understanding the Nature of this Action.

W. Nelson.

OF

OF AN ASSISE

OF Novel Disseisin.

AN Assise is defined by Fleta to be quædam recognitio duodecim juratorum per quam iusticiarii certiorantur de articulis in brevi contentis: Now the chief Article in an Assise of Novel Disseisin is, That the Demandant was disseised of his freehold unlawfully, and without any Judgment given against him in any Court whatsoever.

Neither the Glossographers, nor any of the ancient Writers of the Law, give us a tolerable Account from whence the Word is derived; but Littleton tells us 'tis called an Assise, because the Sheriff is commanded by the Writ Quod faciat duodecim liberos homines, &c. videre tenementum: This may be a Reason why the Jury is called an Assise in the Declaration, tho' it is but a very indifferent one; but we are still to seek why the Writ is so called; and since that is the Foundation of the Action, which the Jury are to try, it had been more to the Purpose for that great Lawyer to have informed us why it is called a Writ of Assise; especially since it doth not take its Denomination from the

the most emphatical and significant Words in the Writ it self, as almost all other Writs do; for tho' the Word Assise is mention'd twice in the Writ, yet no Man can infer from thence, (as Littleton seems to have done) that it is called an Assise, because it commands the Sheriff to summon twelve Men, &c. for it doth not signify a Jury in either of those Places, as it plainly appears by reading the Words, viz. The Sheriff is commanded quod faciat Tenementum esse in pace, &c. usque ad proximam Assisam; and he is likewise commanded to summon the Jury, that they may be ready ad præfatam Assisam; so that Assisa cannot there signify a Jury, but rather a Court or Place where Pleas in Assise were heard and determined.

'Tis true, Assisa is the first Word in the Declaration, viz. Assisa ven. recognitura, &c. and there it signifies a Jury; but I will not trouble the Reader with any fanciful Derivation of the Word, either from the French or Latin; I am certain it is an equivocal Term, because it signifies not only a Writ and a Jury, as before-mentioned, but also an Ordinance and a Court where Cases of Assise of Novel Disseisin, Assises of Mufances and other Assises were formerly heard and determined, which was chiefly in the County-Court before the Reign of H 2. for Causes only of great Importance were removed from thence to the Courts at Westminster.

But the Business of those superior Courts very much encreasing in a few Years, it was thought expedient in that King's Reign to appoint the Circuits of the Judges for the Ease of the People, that as before they had their Causes tried in the County-Court, and other inferior Courts, so Justice should be then done twice in every Year in the respective Counties throughout the Realm; and because Assises were in those Days the most usual and common Writs, which were brought to recover the Possession or Property of any Thing, therefore the Judges, who were then called Itinerant, had a particular Commission directed to them to do Right upon all Writs of Assise brought before them in their Circuits, which Commission is continued

nued to this very Time, and from thence they are called Judges of Assise, and the Place where the Court is kept is called the General Assises, as at this Day.

They have also three other Commissions directed to them and to the Clerk of the Assise in each Circuit; one is a Commission of Oyer and Terminer, and by Vertue thereof they are to inquire into all Offences and Misdemeanors whatsoever done in that County; the other is a Commission of Goal-Delivery, which gives them Power to try all Prisoners in the several Gaols in their Circuit; and another Commission to take the Nisi prius, which is a Writ, and the Meaning of it is thus:

ff. All Writs are made returnable before the Judges in their respective Courts at Westminster, and there all Causes for which such Writs are issued are supposed to be tried; therefore the Sheriff is commanded to bring the Jury thither on such a Day, *Nisi Justiciarii, &c. ad Assisas apud Reading in Com. Berks, &c. capiend' die Martis septimo die Martii prius venerint, &c.*

But the Assise, which is the Subject Matter of these Papers, is an Assise of Novel Disseisin, and that is a Writ directed to the Sheriff upon the Complaint of any Person, who has been disseised of his Freehold, and it is to recover the Possession thereof, whether it be of Things corporeal, as Lands, &c. or Things which are incorporeal, as Fairs, Markets, &c.

There were but two Writs of Assise at Common Law, viz. An Assise of Novel Disseisin, and an Assise of Common of Pasture, that is, where a Stranger's Cattle eat the Pasture for so long Time, and so close, that little or none was left for the Cattle of the Commoner who had a Freehold in the Common; and this appears by the Declaration, in which he must set forth how long the Common was fed, and he must alledge, that per totum tempus proficuum ibidem amisit; for if it is only a small Feeding, and for a little Time, in such Case an Assise would not lie, because the Com-

Commoner might distrain the Cattle Damage-fellant.

There were likewise other Assises given by particular Statutes, viz. An Assise of Mortd'ancestor, by which the Sheriff was commanded to summon twelve Men, &c. Paratos sacramento recognoscere, whether W. the Father of the Demandant, or his Mother, Brother, Sister, or other near Relations, (as the Case might happen) was seised in Fee, &c. at the Time of his or her Death, and from thence 'tis called a Writ of Mortd'ancestor, and whether the Demandant was his or her next heir.

There were two Assises concerning Ecclesiastical Things and Persons, viz. The Assise of Darrein Presentment, and that of Juris Utrum; by the one, the Sheriff was commanded to summon twelve Men, Paratos sacramento recognoscere quis advocatus tempore pacis personam quæ mortua est ad Ecclesiam de Sunning, &c. ultimo presentavit; from which last Words 'tis called an Assise of Darrein Presentment; the other is to command the Sheriff to summon twelve Men, &c. paratos sacramento recognoscere utrum 50 Acres of Land in Sunning, &c. belong to the Church or to a Layman; but these Writs are now antiquated, and a Quare impedit in one Case, and an Ejectment in the other, are become the proper Remedies to recover those Things; and with a great deal of Reason: For a Quare impedit will lie in every Case where an Assise of Darrein Presentment would, but that will not lie where a Quare impedit will; as for Instance, it would not lie but where the Demandant, or his Ancestor, had presented to the Church; but a Quare impedit will lie where the Ancestor never presented.

Tho' these Writs are now almost disused, yet there are some Remains of the Writ of Assise of Novel Disseisin; and because Justice and Right are sooner obtained in this Action than in any other (as may be seen in the Preface to this Treatise) therefore that the Proceedings in such Cases may be in some Measure revived, it may be necessary to shew,

1. Where an *Affise of Novel Disseisin* will lie, for what, and by whom; and what shall be a Seisin and Disseisin.

2. The Method of Proceeding in an *Affise of Novel Disseisin*.

3. Several modern Precedents of Affises brought for Offices, drawn by very learned Lawyers, with some Observations thereon; and also an Affise of Nufance very remarkable.

And first an Affise of Novel Disseisin lies for Lands, Rents, Offices, and generally for every Thing for which a *Præcipe quod reddat* doth lie.

And tho' Trespas, and Ejectment are now the common Actions to recover those Things which formerly were obtained in Affise, yet in many Cases an Affise will lie where those Actions will not; as for Instance, an Affise will lie *de uno Crofto, de Repositorio, de Coquina, de Cellaria, de Alneto, de Bullaria, de Salina, de Claustro, &c.* and many more such Things of an incertain Signification, which is the Reason why an Ejectment will not lie for them; but an Affise will, because they may be put in View of the Recognitors, according to the Command of the Writ.

'Tis for that very Reason that an Affise will lie *de Piscaria*, and an Ejectment will not; for tho' it is *Proficuum capiendum in alieno solo*, yet it may be put in View as aforesaid; but an Ejectment will not lie in such Case, because the Sheriff cannot deliver Possession if it should be recovered.

'Tis true, there was no Remedy at Common Law for those Profits appender in alieno solo; for an Affise in such Cases was given by the Statute W. 2. and ever since it lies for Estovers, to be taken in another Man's Woods, for a Corrody, for the several Sorts of Toll, for Pontage, Passage, Pannage, &c. and such like Things, and also for the Office of a Woodward, Park-keeper, Warrener, &c.

It was never yet doubted but an Affise would lie where a Man was disseised of an Office of Profit, and therefore it was brought where the Demandant was disseised de officio magistri ludorum pilorum pelmarum Domini Regis, Anglice the Office of Master of the King's Tennis-Plays, which was a new Office, granted by the King to the Demandant: And therefore those who argued it would have restrained the Grant that the Demandant should have no Profit by it, but only when the King himself play'd at Tennis: This seemed to the Court to be too strict; for the Grant of the Office ought to have a reasonable Constitution, to make it extend to the Tennis-Plays of the King's Household, and not only when the King himself play'd in Person.

'Tis true, these Affises for new Offices were not much favoured in Law; therefore where an Affise was brought for the Office of the King's Sadler, it was held that it would not lie, because there was no Place mentioned in the Patent where the Demandant should exercise that Office, and by Consequence it could not be put in View of the Recognitors.

For if the King grant the Office of Usher to the Prince of Wales, an Affise will not lie if the Grantee is disseised; but generally where an Affise is brought for a new Office, it ought to be shewed what Profit belongeth to it; but not where it is brought for an old one; for in such Case it is intended that the Profits are well known: However, it must be averred in the Declaration that it is an ancient Office, and proved to be so at the Trial, otherwise the Demandant will be nonsuited; and so it was held where an Affise was brought for the Office of Clock-keeper at Westminster.

An Affise will likewise lie in some Cases where an Action of Trespass Vi & Armis will not; as where a Tenant holds of his Lord by certain Rents and Services, and is distrained so often, tho' nothing is due, that he is disturbed in manuring his Lands; in such Case

That he might have an Assise of Sovent foits distresse, &c. but he could not have Trespass Vi & armis, because he is prohibited by the Statute of Marlbridge.

An Assise was brought for the Office of a Filazer of the Common Pleas, and the Demandant counted de libero tenemento, &c. but alleged Seisin by taking Money for a Capias, and the Post, &c. was put in issue; but in the following Precedents the Reader will not find any particular Act of Seisin alleged in the Declarations, but generally that the Demandant was seized de libero tenemento, &c. and this is now held sufficient, so as the Seisin be proved upon Evidence given at the Trial.

But where a Man prescribes to an Office, there he need not aver that it is antiquum officium; and so it was held where the Demandant was disseised of the Office of Register of the Admiralty, viz. he prescribed that he and all those who had been appointed by the Lord Admiral to be Registers of the Admiralty, have, since out of Mind, been Registers thereof; and this was held good.

If a Master of an Hospital newly built and endowed is deprived of his Office by a Lay Patron without any Cause, he may have an Assise, tho' his Office is new; and the Reason is, because he hath no other Remedy, which shews that in such Case an Ejectment would not lie: But if the Master was an Ecclesiastical Person, and had been deprived by the Ordinary without any Cause, then he could not have an Assise, because he might appeal to the Censor.

And here I cannot omit to mention the Assise which was brought for the Superseas Office, because it is not only very remarkable as to the Method of the Proceedings, but as to the obliging Message which the King sent by his Counsel to the Judges then sitting in Court; for as soon as the Assise was arraigned, they came within the Bar, and in a very respectful Manner told the Judges that the King did greet them well;

well ; but as to the Assise then before them, it concerned his Prerogative, and therefore they were to proceed no further therein ; and immediately they delivered a Writ into the Court de non ulterius proseguendo, Rege inconsulto : The Reporter of this Case tells us, that the Counsel for the Demandant opposed the receiving this Writ, but he doth not mention for what Reason ; probably it might be because it is prohibited by the Statute of Northampton for the Justices to delay common Right, tho' commanded by the Great or Petty Seal ; and there is a Writ framed upon the Statute de procedendo ad judicium, commanding the Justices, quod ad justitiam partibus in Assisa nova disseisinæ quam T. arrainavit coram vobis per breve nostrum versus W. de tenementis in R. faciend' virtute alicujus brevis de magno vel privato Sigillo nostro vobis direct' seu dirigend' nullatenus supersedeatis.

But Fitzherbert tells us, It is in vain to sue forth this Writ, if the Justices do consider their Oath and their Duty to God and the King ; but because some are fearful, and will not do any Thing which may turn to their Displeasure, therefore the Writ was indented ; or the Reason might be, that if the King was any Ways concerned in the Office, the Tenant ought to have pleaded it, and not to have stayed the Proceedings by such an obsolete Writ ; but the Court doubted whether they ought to suffer any Thing to be said against the receiving the Writ, and therefore without any further Debate they allow'd it ; and then it was too late to object against it, so the Proceedings were stayed ; which seems to be a very dutiful Return to that condescending Message which was sent them ; and they unanimously agreed not to proceed in the Cause without a Procedendo ad loquelam, and that when they were ready to give Judgment, they would not do it without a Procedendo ad judicium, which is the Course where the King was concerned in Title.

An Assise will also lie for a Rent-charge, Rent-seck, and Rent-service; which may be brought either by the Tenant for Life, in Fee, or in Tail; but with this Difference, that if 'tis brought for a Rent-charge or Seck, then must be named in the Writ all the Lands out of which those Rents are issuing; but if it is brought for a Rent-Service, then the Writ may be general, *de libero tenemento in R. &c.*

And in such Assises these Things are to be observed; viz. the Demand of the Rent must be made at the House or Land out of which it is issuing, and not of the Person of the Grantor, his Heirs or Assigns elsewhere; and when the Grantee, &c. brings an Assise, it must be in the proper County where the Lands lie, and not in a foreign County; for if it be, tho' 'tis by the Consent of the Parties, it is erroneous, and not only all the Lands out of which the Rent is issuing must be named as aforesaid, but the Tenants of such Lands must likewise be named in the Declaration.

There are some Cases in the Books where these Points are adjudged; and first as to the Demand on the Land, I shall instance in two, viz. A Rent-seck of 4l. per Ann. was granted to R. B. issuing out of an House called the Unicorn in L. payable at Michaelmas and Lady-day, at the House of the Grantee in L. &c. and Six-pence was given in the Name of Seisin: Now in this Case the Rent was issuing out of one House, but made payable at another; and it was demanded at the House, not where it was to be paid, but out of which it issued; and no Body being there to pay it, this was adjudged a Disseisin, and that the Assise was well brought. *Cro. Car. 365. Smith versus Smith.*

So where a Writ of Error was brought on a Judgment in Assise for Rent-arrear, in which the Demandant counted that the Rent was devised to him for Life, issuing out of several Tenements which he named, and that the Testator died, and the Lands

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descended

descended to B. G. and that he was seised of the said Rent by the Hands of the said B. G. until afterwards he was disseised thereof by him, &c. The Errors assigned were, That this Assise being brought for Arrears of Rent due upon a Devise, the Demandant had omitted to shew when the Testator died, for which Reason the Certainty of what was in Arrear could not be known; neither did he alledge that the Rent was demanded on the Tenements, or either of them; for a Demand of the Person himself, who is to pay it off the Land, was adjudged not good; and for these Reasons the Judgment was reversed. Cro. Car. 374. Morris versus Prince.

Then as to the naming all the Tenants of the Land, &c. there is this Case, viz. Husband and Wife were seised of two Manors, which they conveyed by Fine (inter alia) to the Cognisee by the Name of two Manors, and he by the same Fine rendered back to them an yearly Rent of 50l. issuing out of both Manors, and to the Heirs of the Wife; and also rendered both the Manors to the Husband and Wife, and to the Survivor of them for Life, Remainder over in Tail, &c. they both died; the Rent descended to the Demandant as Son and Heir of the Wife, and he being disseised, brought an Assise, and had Judgment therein; and afterwards the Tenant brought a Writ of Error, and assigned for Error, That the Fine was of two Manors inter alia, which Words do naturally import that other Lands besides the Manors did pass by that Fine; and if so, then the Assise brought for the Rent issuing out of the two Manors is not good, because it issued as well out of other Lands not named in the Declaration as out of the Manors which were named; and not only all the Lands, but all the Tenants of the Lands comprised in the Fine, ought to be named; and the Court being of that Opinion, the Judgment was reversed. Cro. Eliz. 226. Gannon versus Weston.

And as there is not so much Certainty required in a Declaration in an Affise as there is in other Actions, because the Thing it self, tho' very uncertainly expressed, is to be viewed by the Recognitors; so the Certainty it self shall not abate for such Matter which would make an Abatement of other Writts.

Therefore where an Affise was brought for Tithes, the Writ was de libero tenemento, and the Declaration was de portione decimarum in R. without mentioning the Certainty of the Tithes; but it was adjudged good, for the taking of Part shall be the Disseisin of the Whole.

So where an Affise was brought for a Mill, it is good if it be de molendino generally, without setting forth certainly the Nature of the Mill; as a Grist mill, Rolling mill, &c. because the Mill is the Substance, and the other are but Additions to shew the Quality of it; and so it was adjudged in the 4th Report in Lutterell's Case.

Neither shall the Writ be abated by the Entry of the Demandant: As for instance, the Office of a Park-keeper was granted in Reversion to the Demandant, and afterwards the Park was granted to another, who entered and kept out the Reversioner after the Death of the Tenant for Life, for which he brought an Affise, and had Judgment; and upon a Writ of Error brought it was assigned for Error, That after the Verdict, and before Judgment, the Demandant had entered into the Park, and there did hunt and kill a Deer, and so had abated his own Writ, and made the Judgment erroneous; but the Court was of a contrary Opinion, and affirmed the Judgment.

So where an Affise was brought for a Cellar, the Tenant pleaded in Abatement that the Demandant had entered after the last Continuance; and the Jury found a Special Verdict, That the Demandant had entered, but it was at the Request of the Tenant, and only to view how old and decay'd it was; and it was

was adjudged that by such Entry the Writ was not abated.

Any Man who is disseised of a Freehold may have an Assise, and in some Cases those who have no Freehold, as Tenants by Statute, or by Elegit, who have only a Chattel-interest; and it was formerly held that in such Case they must count ut de libero tenemento, and not de termino, &c. But now the Law is otherwise, because in an Assise brought by Tenant in Elegit, the Judgment is not to recover the Possession of the Land, but to have Execution done on the former Judgment. Hob. 47. Cox versus Barnsly.

Tenants in Common shall have each a several Assise for his Moiety or Part, because they are seised by several Titles; but twenty Jointtenants shall have but one Assise in all their Names, because they have but one joint Title: So if there are three Jointtenants, and one of them releaseth all his Right to another of his Companions, and then the other two are disseised of the Whole, they shall have but one Assise in both their Names for the two Parts, because they had a joint Title to it at the Time of the Disseisin; and he to whom the Release was given shall have an Assise in his own Name, because of that Part which he released he is Tenant in Common with the other.

In every Assise of Novel Disseisin the Demandant must alledge a Seisin in himself and a Disseisin by the Tenant, and therefore it may be necessary to shew what shall be a Seisin, and what a Disseisin in Law.

The Seisin here intended is an actual Seisin, and not a Seisin in Law; for tho' that may entitle the Lord to distrain and avow for Services, yet it must be an actual Seisin to entitle the Demandant to an Assise.

And

And by particular Statutes there is an Era established, from which this Seisin shall be accounted. As from the Coronation of Henry the 3d, from his first Voyage into Gascoigne, from forty and from thirty Years last past, before the Affise brought, &c. Thus in Fitzherbert's Natura Brevium we find this Writ, Rex, &c. Questus est nobis A. B. Ar. quod C. D. gen. injuste & sine judicio disseisivit eum de libero tenemento suo in R. post primam transfretationem Domini Regis Henrici filii Johannis in Vasconiam: Here the Disseisin implies that the Seisin was within that Time.

But in some Cases it was not necessary to alledge that the Demandant was seised, &c. after the Coronation of H. 3. As for Instance: In Bedell's Case, which happened Anno 5 Jac. it was held, That if an Infant brought an Affise of Mortd'ancestor of the Seisin of his Father or Mother, he need not alledge that it was after the Coronation of H. 3. because it evidently appeareth that it might be so; and manifesta non indigent probatione.

But in an Affise of Novel Disseisin, it is necessary to alledge that the Disseisin was infra triginta Annos jam ultimo elapsos, viz. from the Time of the Affise brought; for if the Disseisin was within that Time, by Consequence the Seisin must be so too.

'Tis true, none of these Statutes of Limitation do in expresse Words exclude a Seisin in Law, the intent of them was to limit a Time within which the Demandant was to have Seisin of the Lands, &c. and therefore in Bevill's Case it was held, That tho' the Statute 32 H. 8. mentions that there must be an actual Possession, or Seisin of Rent within such a Time, yet because the Word Seisin stands by it self without an Adjective, and likewise in the Disjunctive, it may be construed to be a Seisin in Law, as well as an actual Seisin.

This seems too narrow a Construcion of that Sentence ; 'tis true, the Word Seisin is in the Disjunctive, viz. actual Possession or Seisin ; but it doth not stand without an Adjective, because in common Understanding the Word actual shall relate as well to the Seisin as to the Possession of the Rent ; and the Sense is as well, and I think better express'd, by saying a Man shall be in actual Possession or Seisin of a Rent, than to say he shall be in actual Possession, or in actual Seisin of it : The Seisin of the Guardian shall give Seisin to the Infant, and the Seisin of Lands out of which Rent is issuing, if it be by the Hands of Tenant for Life of those Lands, is a sufficient Seisin to have an Assise of the Rent it self.

It was formerly held, That if Lessee for Years paid the Rent to the Demandant, that should be a good Seisin for him to maintain an Assise, if the Rent was afterwards denied to be paid ; but the Law seems to be otherwise now, as it appears in Brediman's Case : Which was thus,

J. The Testator devised a Rent out of his Lands for Life, and by the same Will he devised the same Lands to B. G. for a certain Term of Years ; the Termor paid the Rent to the Devisee for Life, during all his Term, which expired, and afterwards the Devisee for Life demanded the Rent on the very Day it became due ; which not being paid, he brought an Assise : It was adjudged, That the Payment of the Rent by the Devisee for Years could not give the Demandant any Seisin of it, so as to have an Assise against the Certenants, because his Estate for Years is in Judgment of Law so weak that it cannot draw the Freehold into Question ; besides, the Devisee for Years had no Seisin of the Land himself, and by Consequence he could give none to the Devisee of the Rent ; and it would be very inconvenient if he who hath no Freehold should be allowed to give Seisin to another, for then Tenants by Statute-Merchant,

or

or by Elegit, or other Persons who possess Lands only pro tempore, might give Seisin of a Rent to the Lord, when he had none before that Time within the Statute of Limitations.

The Seisin of a Rent by a Parson, which he hath in Right of his Church, is a good Seisin to the succeeding Parsons of the same Church, so as to have an Assise of the Payment of the Rent is denied.

Then as to a Disseisin, it is to be observed, That the Tenant of the Freehold shall not be a Disseisor by any Act done by his Tenant at Will; but he alone, viz. the Tenant at Will, shall be adjudged the Disseisor: Neither shall a Feme Covert be a Disseisor by any Act of her Husband, nor in any Case whatsoever where she doth not actually enter on the Land: Nor shall an Infant be a Disseisor by commanding another to enter who doth it accordingly; but a Man of full Age shall be a Disseisor, if another enters by his Command.

If the Tenant of the Land pay the Rent to a Stranger, who ought not to receive it, such Payment shall be a Disseisin to him to whom the Rent was really due; therefore where a Disseisor made a Lease for Years, and being about to travel beyond Sea, he order'd the Lessee to keep Possession, and pay the Rent to such a Person for his Use till he returned, which was done accordingly; it was in this Case adjudged that the Lessee himself was such a Disseisor that an Assise might be brought against him. Dyer 141. Cutts versus Wills.

I shall now shew the Manner of Proceedings in an Assise of Novel Disseisin, which have been so long disused that very few Practisers know how it should be; and therefore in the Assise between Owen and Saunders, which was tried before the Chief Justice Treby, at Maidstone Assises, the Counsel offering some Objections

sessions to the Writ and to the Return, he told them, That an Assise was festinum remedium; and it habing been disused, the Clerks were not so ready as formerly, when it was the most usual Action brought in all the Courts of Law; and therefore it was in the Discretion of the Court to over-rule those Niceties in which they had very little Experience, and order them to come purely to the Matter, which was done accordingly; and they pleaded the same Day.

And because the Writ is the Foundation of the Action, I think it proper to transcribe it.

THE

THE ASSISE

Taken by Default.

¶ **G**eorgius Dei Gratia Magnæ Britannia Fran-
cia & Hibernia Rex Fidei Defensor, &c.
Vicecomiti Berks salutem. Questus est no-
bis Willielmus Robinson, Gen. quod Ben-
jamin Gates, Gen. injuste & sine iudicio disseisivit eum
de libero tenemento suo in Reading infra triginta annos
jam ultimo elapsos. Et ideo tibi præcipimus quod si
præd. Willielmus fecerit te securum de clameo suo
prosequendo tunc facias tenementum illud reseisiri cum
catallis quæ in eo capta fuerunt & ipsum tenementum
cum catallis esse in pace usque ad primam Assisam cum
Justiciarii nostri in partes illas venerint. Et interim facias
duodecim liberos & legales homines de vicineto illo
videre Tenementum illud & nomina eorum imbrevi-
ari, & summoneas eos per bonos summonitores quod
tunc sint coram præfat. Justiciariis ad præfatam Assi-
sam paratos inde facere Recognitionem. Et pone per va-
dios & salvos plegios præd. Benjamin vel ballivum
suum si ipse inventus non fuerit quod tunc sit ibi ad
audiend. illam Recognitionem. Et habeas ibi summoni-
torum nomina plegios & hoc breve. Teste meipso apud
Westm' primo die Februarii Anno regni nostri quarto.

Pleg. de prof. { Johannes Doe.
Richardus Roe.

If this Writ is brought in Term-time, then the Attorney for the Plaintiff usually causes a Plaint to be stuck up under the Seat of the Cryer of the Court of Chancery in Westminster-hall; and if it is brought in the Vacation, then he causes the Plaint to be stuck at the End of Chancery-lane next Fleet-street, in this Form:

The Copy of the Plaint.

Berks, ss. **W**illielmus Robinson, Gen. arainavit Affisam novæ disseisinæ versus Benjamin Gates, Gen. de libero tenemento suo in Reading, &c.

The Writ of Affise must be delivered to the Sheriff or Under-Sheriff of the County where the Lands lie, and for which it is brought, or where the Office is executed; if it be for the Disseisin of one from an Office, and if the Tenant cannot be found, then the Sheriff makes this Return:

ss. Infranominat' Benjamin Gates nihil habet in balliva mea per quod attachiari, potest nec est inventus in eadem balliva mea, nec habet ballivum vel ballivos in eadem.

Residuum executionis istius brevis patet in quadam Scheda brevi annexata.

T. Wingate, Ar. Vic.

If there are more Tenants than one against whom the Writ is brought, and none of them can be found, then the Sheriff makes this Return on the Writ of Affise:

ff. Infrapominat' Benjamin Gates & uxor ejus & Willielmus Hughes nihil habent nec eorum aliquis habet aliquid in balliva mea per quod attachiari aut eorum aliquis attachiari potest nec sunt inventi nec eorum aliquis est inventus in eadem balliva mea, nec habent nec eorum aliquis habet ballivum vel ballivos in eadem.

Residuum executionis istius brevis patet in quadam schedula huic brevi annex'.

T. Wingate, Ar. Vic.

These Returns are made where the Tenant or Tenants are not to be found, and where the Assise is afterwards taken by Default, in which Case the Proceedings are as follows :

The Sheriff having received the Writ of Assise, and made the Return as aforesaid, he must then annex a Panel to it, in which the Names of the Recognitors must be engrossed; for this is expressly commanded by the Writ in these Words, viz. Nomina in-breviari, which he must do in this Manner :

Berks, ff. Nomina Recognitorum cujusdem Assise novæ disseisinæ inter Williel. Robinson quer. & Benjamin Gates Def. de libero Tenemento in Reading :

Willielmus Wade de Okingham, Ar.
Robertus Thompson de Pangborne, Ar.
Georgius Stanton de Sunning, Gen.

And so proceed to the Number of Twenty-four, and then at the Bottom of the Panel the Sheriff writes the Names of those who summoned the Recognitors: This likewise is commanded by the Writ, viz. Et habeas ibi summonitorum nomina; which is thus,

ff. Sum-

ff. Summonitores Recognitorum prad. & eorum
cujuslibet

Richardus Reeve.
Johannes Strong.

And those Summoners are usually two of the Sheriff's Officers : At the Bottom of the Panel the Sheriff must likewise write the Names of the Manucaptors, which is only Matter of Form ; and these are also four of his Officers, whose Names are thus written :

ff. Manuceptores summonit' recognitor' prad. &
eorum utriusq;

Jacobus West.
Richardus South.
Willielmus East.
Thomas North.

There must likewise be an Habeas Corpora Recognitorum, if the Affise is brought in the Common Pleas, and a Distringas if in the King's Bench; the Return whereof is thus :

ff. Executio istius brevis patet in quodam pannello huic brevi annexato.

T. Wingate, Ar. Vic.

Then the Sheriff must make another Panel of the Recognitors Names, and annex it to the Habeas Corpora ; in this Form :

ff. Nomina Recognitorum cujusdem Affisæ novæ disseisinæ inter Willielmum Robinson, Gen. quer. & Benjamin Gates, Gen. Def. de libero tenemento in Reading.

Willielmus Wade de Okingham, Ar.
Robertus Thompson de Pangborne, Ar.
Georgius Stanton de Sunning, Gen.

Affise taken by Default.

21

And so on to the Number of twenty-four, as before;
and at the Bottom of this Panel the Sheriff writes
thus :

℞. Quilibet recognitorum præd. per se separa-
tim attach' est per plegios, viz.

Per { Johannem Denn.
Richardum Renn.

Exitus cujusdam per se 10 s.

Tho. Wingate, Ar. Vic.

The Recognitors being thus returned, the Sheriff must afterwards (but at least fifteen Days before the Assises) summon them to appear at some publick and convenient Place, and when six or more are present; but not exceeding twelve, nor under the Number of six; then he is to go with them to view the Lands; or if the Affise is brought for an Office, then they are to view the Place where the Person usually sits in Court to execute the Office: This also is commanded by the Writ in these Words, viz. Et interim facias duodecim liberos & legales homines de vicineto illo videre tenementum illud, &c. And when they have viewed it, the Sheriff is to adjourn them to the first Day of the next Assises, &c. at which Time a full Jury of them must appear.

At the Assises immediately after the Commission is read, the Writ of Affise, and the Return thereof, and the Count or Declaration, both engrossed on Parchment and in Latin, must be delivered by the Plaintiff's Attorney to the Clerk in Court, which he must read; but before he reads it he must call the Recognitors thus:

Clerk.] You good Men, Recognitors of an Affise of Novel Disseisin, summoned to appear here this Day between A. B. Plaintiff, and C. D. Defendant, answer to your Names.

William Wade.
R. Thompson.
G. Stanton, &c.

G

When

When the Jury are call'd, then the Clerk must read the Writ in Manner as before set forth, and the Count in Latin thus, or as the Case requires.

Berks, ff. Assisa ven. recognitura si Benjamin Gates Gen. injuste & sine iudicio, &c. disseisivit Williel. Robinson Gen. de libero tenemento suo in Reading infra triginta Annos &c. & inde idem Willielmus in propria persona sua queritur quod præd. Benjamin disseisivit ipsum de officio Clerici pacis in & pro præd. Comitatu Berks & pro titulo liberi tenementi de Officio præd. cum pertinen. & Assisa præd. habend. idem Willielmus dicit quod officium illud est antiquum officium in Com. præd. videl. apud Reading præd. quoddam per quendam actum in parlamento Domini Regis Will. &c. apud Westm. in Comitatu Middlesex tertio decimo die Februarii Anno Regni sui primo tent. edit. intitulat. An Act for enabling Lords Commissioners for the Great Seal to execute the Office of Lord Chancellor, or Lord Keeper, inter alia enactat' fuit autoritate ejusdem Parlamenti quod Custos Rotulorum vel alia persona cui de jure pertinere debuit vel deberet nominare sive appunctuare Clericum pacis pro aliquo Comitatu Riding vel divisione vel alio loco de tempore in tempus ubi Officium Clerici pacis tunc fuit sive extunc postea vacat' foret nominare & appunctuare unam idoneam & sufficientem personam residen. in dicto Comitatu. Riding divisione vel alio loco pro quo sic appunctuat. fuit sive foret appunctuat. Clericum pacis ad exequend. idem per seipsum vel sufficien. deputat. suum & capere & recipere feoda & proficua & perquisitiones ejusdem pro tam longo tempore tantum quam talis Clericus pacis bene se gereret in dicto suo officio. Et ulterius enactat. fuit autoritate præd. quod quilibet Clericus pacis antequam intraret super executionem dicti Officii in aperta Sessione præstaret Sacramentum in eodem actu mentionat. sequen. videlt. I William Robinson do swear that I have not, nor will pay any Sum, or Sums of Money, or other Reward whatsoever, nor given any Bond or other Assurance to pay any Money, Fee, or Profit, directly or indirectly, to any Person or Persons whomsoever, for such Nomination or Appointment. So help me God.

Prout

Prout per eundem actum plenius apparet. Quodq; tempore editionis actus præd. & diu antea & continue extunc hucusq; postea nominatio & appunctuatio Clerici pacis dict. Com. Berks pro tempore existen. de jure spectabat & pertinebat super quamlibet vacationem Custodi rotulorum pro Comitatu præd. pro tempore existen. Quodq; post editionem actus præd. scilt. decimo quinto die Julii Anno Regni, &c. primo supradicto Carolus Dux St. Alban tunc Custos rotulorum præd. Com. Berks præd. nominavit & appunctuavit ipsum Willielmum Robinson ad officium Clerici pacis pro Comitatu Berks præd. adtunc vacans existen. ipsoq; prædicto Willielmo adtunc existen. persona in legibus perita & idonea & sufficien. ad Officium illud exequend. & adtunc & adhuc residen. in Comitatu videlt. apud Reading præd. quodque idem A. B. antequam ipse intravit super executionem officii præd. scilt. in aperta quarteriali sessione pacis in & pro Comitatu præd. tent. die & Anno ult. supradict. præstitit sacramentum mentionat. & content. in præd. Statuto videlt. apud Abingdon in Comitatu præd. & in Officium illud adtunc & ibidem admissus fuit per quod idem Willielmus debito modo devenit Clericus pacis Com. Berks præd. & Officium illud cum vadiis & feodis adinde pertinen. habuit tenuit exercuit & occupavit & gavisus fuit ac seipsum in eodem officio bene gesserit & inde fuit seifit' in dominico suo ut de libero tenemento pro termino vitæ suæ quousq; præd. Benjamin ipsum Williel. de officio illo injuste & sine judicio disseisivit videlt. apud Reading præd. & inde petit Affisam, &c.

After the Writ of Affise and the Declaration thus engrossed are delivered to the Clerk in Court, and read by him, then the Plaintiff must be called thus :

Clerk.] William Robinson come forth and prosecute thy Writ of Affise.

And if he doth not appear, he must be called Non-suit ; if he doth appear, then the Defendant must be called.

Clerk.]

Clerk.] Benjamin Gates come into Court, or else this Assise will be taken against thee by thy Default.

And if he doth not appear then the Counsel for the Plaintiff saith thus :

Counsel for the Plaintiff.] Monseigneur ieo prie que le Assise soit prise per default.

Which the Court will order; then the Counsel for the Plaintiff arraigns the Assise by reading a Copy of the Writ in French, which is thus :

Counsel for the Plaintiff.] Gulielme Robinson gentilhome ad port son breife envers Benjamin Gates gentilhome complainer que il ad injustement & sans jugement luy disseise de son franktenement in Reading deins trent ans darrein elaps & sur ceo fuit praecept. Vic. Berks quod si le dit Gulielme faire luy mesme secur de son clamor prosecute donque il faire le dit tenement destre reseise de les Chattles que fuer in ceo prise & pur mitter le dit tenement in paix jusq; ad premier Assises quand les justices de Roy viendra in ceux parts & cependant que il faire douze liberal & loyal homes de le Vicinage pur voyer le dit tenement & pur embreviar lour nosmes & pur ils summoner per bon summonitor que ils donque serront devant les dits justices al les dit Assises prist a faire recognition de ceo & que il pon per save gages & pledges le dit Benjamin ou son bailiffe (sil nient ferroit invent) que il donque avera la les nosmes des pledges & cest brieve Teste le Roy al Westm. le douzeiem Februar en le Ann seisme de son reigne.

After the Writ of Assise is read by the Plaintiff's Counsel in French as aforesaid, then he immediately reads the Count or Declaration in French thus :

Counsel for the Plaintiff.] Berks, ff. Le Assise ven recognitur si C. D. gentilhome; and so on to the End in French.

After

After the Writ and Declaration are read by the Counsel in French, as before-mentioned, then the Counsel goes on thus :

Counsel for the Plaintiff.] Vous bien entendez, Monseigneur, que A. B. arraine un Affise de Novel Disseisin de son franktenement in Reading envers C. D. & ieo prie que il serra demand.

Then the Clerk of the Affise calls the Tenant three Times thus :

Clerk.] C. D. come forth, or this Affise will be taken by thy Default.

And if he doth not appear upon the third Call, then the Counsel for the Plaintiff saith thus :

Counsel for the Plaintiff.] Ieo prie, Monseigneur, que le Affise soit prise per default.

This is ordered by the Court ; and then the Clerk of the Affise endorses the Panel thus :

Affisa capiatur per default.

Which Default goes only to the Challenges ; for immediately afterwards the Cause proceeds in this Manner.

Clerk.] You good Men, Recognitors of this Affise, who are impanelled to appear here this Day, between A. B. Plaintiff, and C. D. Defendant, answer to your Names.

Then he asks them severally if they have * view-
ed the Place, &c. for which the Affise is brought, till
six of them say that they have view'd it ; and then he
gives them the following Oath.

* If they
be sworn that
they know
the Place, it
is sufficient
if the Plain-
tiff's Servants shew them the Place, by the Order of the Sheriff, it is good. *Godb. 209.*

Str John Gage versus Smith.

The Form of the Oath.

Clerk.] **Y**OU shall well and truly try this Matter of Affise between the Parties, according to your Evidence. So help you God.

After twelve are sworn, then the Clerk says thus :

** Or Office, or
as the Case is.*

Clerk.] You are to enquire whether the Demandant was seised of such an Estate in the * Tenements in Demand, with the Appurtenances, as that he might be thereof disseised ; and whether he was disseised thereof, or of any Part thereof, by the Tenant in this Affise, with Force, or without ; and if you find that the Demandant was seised of such an Estate as that he might be disseised ; and that he was disseised thereof, or of any Part thereof, by the Tenant in this Affise, either with Force, or without ; then you are to inquire what Costs and Damages the Demandant hath sustained from the Time of such Disseisin ; and if you find that the Demandant was seised, and not disseised by the Tenant, then you are to say so, and no more ; and so stand together and hear the Evidence.

The Witnesses must be served with a Ticket, and the Subpoena must be shewed to them under the Seal, as in other Causes.

The

The Form of the Subpoena.

¶ **G**eorgius Dei Gratia Magnæ Britannia, &c. Rex,
 Thomæ Williams & Rogero Constable salutem.
 Præcipimus vobis quod omnibus & singulis excusationi-
 bus quibuscunq; cessantibus sitis & quilibet vestrum sit in
 propriis personis vestris coram Justiciariis nostris ad
 Affisas in Com. Berks capiend' assign' diē Mercurii de-
 cimo tertio die Martii prox' futur' ibidem ad testificand'
 veritatem scientiæ vestræ in quadam Affisa novæ dissei-
 sinæ adtuac capiend' inter *A. B.* quer. & *C. D.* te-
 nentem de libero tenemento in Reading: Et hoc nulla-
 tenus omittatis nec aliquis vestrum omittat subpoena
 centum librarum. Teste, &c.

Thus the Witnesses being ready, the Counsel for
 the Plaintiff opens the Case, and proceeds to give
 Evidence of the Seisin and Disseisin, and how long it
 was since the Disseisin, because the Recognitors are
 to give Damages from that Time; and he must give
 Evidence of the Force, if there was any, because in
 such Case there must be a Capiatur pro fine.

After the Recognitors have considered of their Ver-
 dict, and are returned into Court, the Clerk calls
 over their Names again thus:

Clerk.] William Wade, &c. and so on to the
 Number of Twelve.

Clerk.] Are you agreed on your Verdict?

Recognit.] Yes.

Clerk.] Who shall say for you?

Recognit.]

Recognit.] The Foreman.

Clerk.] Do you find for the Demandant or Tenant?

Recognit.] For the Demandant.

Clerk.] Do you find the Disseisin was done with Force, &c.?

Then the Entry of the Judgment is thus:

Placita Assise apud Reading in Com' Berks coram Johanne Holt Mil. Capital Justitiar' Domini Regis de Banco & Egidio Eyre Milite uno Justitiar' Domini Regis ad Assisas in Com' Berks capiend' assign' die Martis decimo tertio die Martii Anno Regni Regine nunc quinto.

Et Recogn' Assise præd' exact' similiter venerunt qui ad veritatem de præmissis dicend' electi triar. & jurat. dicunt super sacrament' suum quod præd' Benjamin Gates injuste & sine judicio disseisivit præd. Willielmum Robinson de Officio (*put in the Words exactly as in the Count*) sed non Vi & Armis & assidunt dampna ipsius Willielmi pro valore Officii præd' a tempore disseisinæ præd' ei inde factæ ultra misas & custagia sua per ipsum circa sectam suam in hac parte apposit. ad ducentas libras & pro misis & custagiis ill' ad quadraginta solid', &c. Ideo, &c. See *Benloe's Reports*, last Edition, fol. 50, 51, 52, 53.

The Costs are to be taxed by the Clerk of the Assise, and the Judgment is to be entered, and Execution made out at the same Assises by a Writ of Seisin; which is thus:

The

The Writ of Seisin.

GEOrgius Dei Gratia Magnæ Britanniæ Franciæ & Hi-
berniæ Rex Fidei Defensor, &c. Vic[er] Ber[oni]e sala-
tem. Cum Willielmus Robinson, Gen[er] in Curia no-
stra coram Justitiariis nostris ad Affisas pro Com[uni] præd[ic]ta
nunc hic tent[ur] apud Reading in Comitatu præd[ic]to coram
J. H. & G. E. Justitiariis nostris ad Affisas in Com[uni]
præd[ic]ta capiend[is] assign[atis] per quandam Affisam novæ dissei-
sinæ recuperavit versus Benjamin Gates, Gen[er] tam Sei-
sinam suam de & in Officio (*here name the Office exactly
as in the Count*) per visum Recognitorum Affisæ præd[ic]te
tam ducent[ur] libras pro dampnis suis quæ sustinuit occa-
sione disseisinæ præd[ic]te quam quadraginta solid[us] pro misis
& custagiis suis per ipsum circa Affisam suam præd[ic]ta in ea
parte apposit[us] unde idem Benjamin convict[us] est sicut per
recordum inde in Curia nostra præd[ic]ta plenius apparet. Ideo
tibi præcipimus quod eidem Willielmo Robinson plenar[um]
Seisinam de Officio præd[ic]to cum pertinentiis sic ut præfer-
tur recuperatis sine dilatione habere facias. Præcipimus
etiam tibi quod de bonis & catallis præd[ic]te Benjamin
Gates in balliva tua fieri facias ducent[ur] & duas libras
bonæ & legalis monetæ Magnæ Britanniæ pro damnis
misis & custagiis præd[ic]te in forma præd[ic]te recuperatis & de-
narios illos habeas coram, &c. ad reddendum præ-
fat[um] Willielmo Robinson pro damnis misis & custagiis
suis. Et habeas ibi, &c.

The Return of the Writ of Seisin.

Virtute istius brevis mihi direct' die & anno
 &c. habere feci infranominat' Wilhelmo Ro-
 binson plenar' Seisinam de Officio infra-script' per vi-
 sum quorundam Recognitorum Affisæ infra-specificat.
 prout interius mihi præcipitur.

T. Wingate, Ar. Vic.

T H E

ASSISE

WHERE

The Tenant appears.

There are some Variations in the Proceedings in an Alise, where the Tenant appears, and where he made Default as aforesaid; which are as follow:

Tho' the Writ of Alise is the same, yet the Return is different; which is thus:

§. Infranommat. Benjamin Gates At- } A. B.
tach' est per plegios } C. D.

Respons. T. Windham, Ar. Vic.

If the Tenant himself is not to be found, but only his Bailiff or Deputy, who executes the Office; then, because the Writ commands the Sheriff ponere per vadios & salvos plegios, (the Tenant) vel ballivum suum si ipse non est inventus, the Return must be thus:

§. Infra-

¶ Infranoninat. (the Tenant) non est
inventus in balliva mea sed Richar-
dus West ballivus præd' (the Te-
nant) est attachiatus per plegios

A. B.
C. D.

Respons. T. Wingate. Ar. Vic.

And under these respective Returns, as the Case happens, the Sheriff writes thus :

Residuum executionis istius brevis patet in qua-
dam Scheda huic brevi annexa

T. Wingate, Ar. Vic.

Then the Sheriff must annex a Panel of the Names of the Recognitors to the Writ of Assise, which must be Twenty-four in Number as before; and at the Bottom of the Panel he must write the Names of two Persons who summoned them, and the Names of the four Manucaptors in the same Form as before, where the Assise was taken by Default, and under that the Sheriff's Name.

T. Wingate, Ar. Vic.

The Sheriff must likewise summon the Tenant at least fifteen Days before the Assise, which is usually done by two of his Officers, whose Names must be endorsed on the Writ of Assise thus :

¶ Summonit. C. D. Tenentie Johanne West.
in Assisa infrascripta Robertus East.

If the Tenant is not thus summoned, he may wage his Law of Non-Summons; but if he is summoned, then a true Copy of the Writ of Assise must be written on the Summons, and with it delivered to the Person so summoned, or to his Deputy or Bailiff, if he cannot

Assise where the Tenant appears

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cannot be found; with Notice also thereon to appear at the first Day of the Assise.

But before that Time the Sheriff must summon the Recognitors to appear at some publick and convenient Place as before-mentioned; and when six or more, but not exceeding twelve, are met together, my less than six, then he is to go with them to view the Place, &c. as before, &c. And when they have view'd it, the Sheriff is to adjourn them to the first Day of the Assise, at which Time a full Jury must appear, because there are not any * Tales allowed in an Assise; and then after the Commission is read, the Writ of Assise and the Return thereof, and the Count in Latin, and engrossed on Parchment, must be delivered into the Court by the Plaintiff's Attorney, in the same Manner as before-mentioned.

* Cro. Car.
149. Lort ver-
sus Bishop of
St. David:
There shall
not be a Tales
de circumstan-
tibus, but a
Decem Tales se-
cundum for-
mam Statuti.

After the Writ and Declaration so engrossed in Parchment are delivered to the Clerk in Court, he must immediately read them in Latin; but before he reads them, he must call the Recognitors as before-mentioned; and they appearing, he must then read the Writ and Count, and then call the Plaintiff.

Clerk.] Andrew Barker, come forth and prosecute thy Writ of Assise.
And he appearing, then the Clerk must call the Defendant.

Clerk.] John Holmes, come into Court, or else this Assise will be taken against thee by Default.

And then the Tenant appearing by his Counsel, saith thus:

Counsel for the Defendant.] We crave Oyer of the Writ and Return, and Time to plead tam ad breve quam ad narrationem.

K

And

I

And immediately the Counsel for the Plaintiff arraigns the Assise as before-mentioned by reading the Writ of Assise in French, and the Count also in French as before; and after the same are read, he says;

Counsel for the Plaintiff.] Vous bien entendez, Monseigneur, que A. B. arraine en Assise de Novel Disseisin de son Franktenement in Reading envers C. D. & jee prie que il serra demand.

Then the Clerk of the Assise calls the Tenant again.

Clerk.] C. D. come forth, or this Assise will be taken against thee by thy Default.

And he appearing, then the Clerk says;

Clerk.] Gardes vostre Challenges.

But before the Recognitors are sworn, the Court usually adjourns to some further hour of the same Day, or of the next Day, that the Tenant may have time to plead, or to demur to the Writ or Declaration; a Copy whereof he is to have from the Clerk of the Assises.

The

The Adjournment.

Clerk.] **A**LL Manner of Persons who have any Thing more to do in this Writ of Affise of Novel Disseisin between *Andrew Barker*, Plaintiff, and *John Holmes*, Defendant, may depart from hence at this Time, and give their Attendance here at five of the Clock in the Afternoon.

He must give the Recognitors a strict Charge to attend at the same Time; and when they all appear at the Time to which they were adjourn'd, then the Countel for the Tenant may take Exceptions to the Writ or Return, (if they have any) and if not, then he must either demur to the Count, or plead: If he demurs, and the Court give Judgment against him upon the Demurrer, the Plaintiff still proceeds, because the Judgment upon a Demurrer in an Affise is, *Quod Affisa capiatur*.

If he plead *Nunquam seiscus*, or the General Issue, Null tort, null disseisin, or any other issuable Plea, the Plaintiff joins immediately; then the Clerk calls the Recognitors again, for they are not to be sworn till Issue is joined.

Clerk.] You good Men, Recognitors of this Affise, impanelled to appear here to Day, between *A. B.* Plaintiff, and *C. D.* Defendant, answer to your Names.

William Wade.
R. Thompson.
G. Stanton, &c.

Then he asks them severally if they have viewed the Place, &c. for which the Affise is brought, till six of them say they have viewed it; and then he gives them the following Oath:

I

Clerk.]

Clerk.] You shall well and truly try the Issue of this Assise between the Parties according to your Evidence. So help you God.

After twelve of them are sworn, then the Clerk is to give them such a Charge as before-mentioned.

Clerk.] *J.* You are to enquire whether the Demandant was seised of such an Estate, &c.

Which you may see before, Page 26.

Then the Counsel for the Plaintiff opens the Declaration, and proceeds to give Evidence of the Seisin and Disseisin (as before-mentioned) and how long it was since the Disseisin, because Damages are to be given from that Time; and if the Disseisin was by Force, there must be a Capiatur pro fine.

Afterwards the Counsel for the Defendant makes the Defence as in other Trials.

The Costs are to be taxed by the Clerk, and the Judgment entered by him in Form as before-mentioned, and to be signed by the Judge, and Execution made out at the same Assises by a Writ of Seisin; all which may be seen before.

T H E

THE ASSISE FOR OFFICES.

Having now mentioned where an Assise of Novel Disseisin will lie, and by whom, and that it must be an actual Seisin within such a Time to entitle the Demandant to a Writ of Assise, &c. and not a Seisin in Law: Having also shewed in what Manner to proceed, both where an Assise is brought and taken by Default, and also where the Tenant appears and pleads to Issue; the next Thing proposed was to transcribe some modern Precedent in Assises of Novel Disseisin, drawn by very good Advice; and because several of them concern Disseisins of Offices; it may not be improper in this Place to make some Observations on the Pleadings in such Cases; and likewise to offer something concerning the Offices herein-after mentioned.

As to the Pleadings; the Reader will find that the Demandant always sets forth in the Declaration that he was *adtunc idonea persona ad Officium præd. cum pertinentiis exercend.* where the Adverb *adtunc* must relate to the Time of the Grant of the Office; and in one of the Precedents it is *adtunc & adhuc existen. idonea & sufficien. persona ad Officium præd. exercend.* where one of the Adverbs must relate to the

Time of the Grant of the Office, and the other to the Time of bringing the Assise ; tho' the Adverb adhuc is not absolutely necessary.

But adtunc existen' idonea Persona seems to be so very requisite, that the Pleadings would not be good without it ; and if it is an Office in the Law, then the Allegation must be, That the Demandant adtunc existen' persona in legibus perita & idonea & sufficien' ad Officium illud exequend' ; for if a Man is not capable to execute an Office, it ought not to be granted to him ; or if it is granted, it is void in Law ; therefore Sir Robert Brooke, who was Chief Justice of the Common Pleas, having granted the Office of Chief Prothonotary of that Court to his Wife's Brother, but afterwards finding him incapable to execute it, he revoked the Grant, and gave this Reason for it : Because the Grantee was inidoneus ; and thereupon he granted the same Office to another, who executed it under that Grant ; upon which my Lord Dyer makes this Remark : Ex quo vide, that the Grant of the Office was incident, and did belong to the Chief Justice ; which was a very notable Remark by him, because it might concern himself, for he was then Chief Justice of the Common Pleas, and afterwards granted this very Office to the Publisher's Grandfather ; then he cites a Precedent, Anno 5 Ed. 4. where the King granted the Office of Clerk of the Crown in the King's Bench to A. B. and C. D. and that A. B. died, and because C. D. was incapable to execute that Office, the Lord Chief Justice made a Certificate of the Disability of the Person, and thereupon the King, Ore tenus, recommended another to the same, and commanded the Chief Justice to admit and swear him ; and upon this my Lord Dyer made another Remark, viz. Ex quo nota, that the said Office is in the King's Gift.

So that an Office either of the Grant of the King, or of a Subject, which concerns the Administration of Justice, or any Proceeding or Execution therein ; or of the King's Revenue, or of the Interest, Benefit or Advantage of the Subjects in general ; if granted to a Per-

a Person who is unexpert, and who hath no Skill or Knowledge to execute it, such Grant is void in Law.

Therefore an Infant is not capable of the Stewardship of a Court, either in Possession or Reversion; and a Grant to him thereof is void, unless it is granted to be exercised by himself, or his sufficient Deputy; and for this there is a Case adjudged in Point, viz. In a Special Verdict, the Jury found that the Bishop of Rochester, for the Time being, did always grant the Office of Register within his Diocese, as well in Possession as in Reversion, for the Life of the Grantee, to be exercised when it should come into Possession per se vel sufficientem Deputatum suum: That the Bishop, for the Time being, had granted the said Office to one W. B. for Life, which Grant was confirmed by the Dean and Chapter, and then he died; That the succeeding Bishop granted the same Office to his Son in Reversion, who was an Infant of the Age of eleven Years at the Time of the Grant made, to be exercised by himself, or his sufficient Deputy; but that he came of full Age before the Tenant for Life died; That this Bishop likewise died, and his Successor granted the same Office to the Defendant: And the Court was clear in Opinion, That the Grant of this Office in Reversion to an Infant, after the Death of the Tenant for Life, to be executed by himself, or his sufficient Deputy, was good in Law: And it was likewise resolved, That this Office being found to be usually granted in Possession or in Reversion, for the Life of the Grantee, that every Bishop for the Time being might make a Grant thereof, because it is a necessary Office, and ought always to be full; and there is no Manner of Prejudice to the Successor by such Grant, because he is not abridged of any Profit by it. Cro. Car. 401. *Young versus Fowler*, March 38. S. C.

I shall conclude this Matter with Dr. Sutton's Case, against whom Articles were exhibited before the Ecclesiastical Commissioners, that he being a Divine, and having a Benefice with Cure of Souls, and
never

never educated in the Civil or Canon Law, nor having any knowledge therein, had accepted the Office of Chancellor of the Bishop of Gloucester, against divers Ecclesiastical Canons and Constitutions, and express Directions from the King, that none should be admitted to such Office, unless he was learned in those Laws. The Doctor being examined, confessed that he was a Divine, and had a Benefice, but said that the Office of Chancellor was granted to him by the Bishop of Gloucester for Life, which Grant was confirmed by the Dean and Chapter; so that he had a Freehold in it, and therefore prayed a Prohibition, because in Cases of Freehold the Ecclesiastical Courts could not proceed: But it was denied; for if he is a Person unskilful in those Laws, and so incapable of executing the Office, they may examine him there; as if a Layman should get Admission and Institution to a Benefice, he hath a Freehold; but yet he may be sued in the Spiritual Court, and deprived. Cro. Car. 47. Godbolt 390, 391.

T H E

AN
ASSISE
FOR THE
OFFICE
OF
Serjeant at Arms.

Crake

Ver.

Northfolke.

At the Bar.

Midd. ff.

ASSISA ven. recognitur. si Jacobus Northfolke Mil. injuste & sine iudicio disseisivit Michaellem Crake Ar. de libero tenemento suo in Westm. in Com. Midd. infra triginta Annos, &c. Et unde idem Michael in propria Persona sua queritur quod præd. Jacobus disseisivit eum de Officio unius Servientium Domini Regis nunc ad arma specialiter attenden. circa personam dicti Domini Regis nunc extra tempus Parliamenti sui

M

& in

& in tempore cujuslibet Parliamenti attenden. super Prolocutorem elect. sive eligend. per Communes regni Angliæ in singulis Parliamentis suis Hæred. & Successorum suorum convocand. & pro titulo liberi tenementi de Officio præd. cum pertinentiis & Assisam præd. habend. idem Michael dicit quod Officium præd. est antiquum Officium infra Civitat. Westm. in Com. Midd. præd. & concessum & concessibile cuicunque personæ idoneæ & sufficienti per Reges & Reginas Angliæ pro tempore regnantes per literas suas patentes sub Magno Sigillo Angliæ sigillat. pro tempore vitæ talis personæ tam in possessione quam in reversione. Ad quod quidem Officium pro toto tempore supradicto spectabat domus in Westm. præd. in qua quidem domo Communes Angliæ assemblebat. in Parlamento sedebant & soliti sunt sedere tempore Parliamenti Domini Regis nunc & predecessorum suorum Regum & Reginarum Angliæ pro tempore existent. apud Westm. in Com. præd. tam in tempore cujuslibet Parliamenti quam extra tempus Parliamenti supervidend. & servand. & præd. Serviens ad arma pro tempore existent. virtute ejusdem Officii Servientis ad arma supervidebat & servabat & per consuetud. supervidere & servare debet & debuit prædict. domum. Quodque Carolus primus nuper Rex Angliæ per quasdam literas suas patentes geren. dat apud Westm. undecimo die Julii Anno Regni sui decimo nono recitan. quod cum præcharissimus pater suus Dominus Jacobus nuper Rex Angliæ per literas suas patentes geren. dat apud Westm. (—) pro se Hæredibus & Successoribus suis dedisset & concessisset (inter alia) dilecto & fideli servienti suo Edwardo Grimstone, Ar. Officium unius Servient. suorum ad arma pro termino vitæ suæ & quod esset specialiter attenden. circa personam suam extra tempus aliqujus Parliamenti sui & quod ipse tempore cujuslibet Parliamenti esset attenden. super Prolocutorem elect. sive eligend. per Communes Regni sui Angliæ in singulis Parliamentis suis Hæredum & Successorum suorum convocand. Quod quidem Officium Rogerus Wood tunc nuper habuisset & exercuisset. Habend. & tenend. dictum Officium præfato Edwardo Grimstone durante vita sua & habend. & percipiend. eidem Edwardo Grimstone & Assign. suis pro exercitio & occupatione Officii præd. duodecim

duodecim denarios legalis monete Angliæ per diem à tempore mortis præfat. Rogeri Wood pro tempore vite naturalis dicti Edwardi Grimstone de Thesauro suo Hæredum & Successorum suorum ad recept. Scaccarii sui Hæredum & Successorum suorum per manus Thesaurarii & Camerarii suorum Hæredum & Successorum suorum pro tempore existen. ad quatuor Anni Terminos videlt. ad festa nativitatis sancti Johannis Baptistæ sancti Michaelis Archangeli Natalis Domini & Annunciation. Beatæ Mariæ Virginis per æquales portiones solvend. Et insuper per easdem literas patentes dedisset & concessisset præfat. Edwardo Grimstone liberam suam vesturam de fect. aliorum Servien. suorum ad arma percipiend. annuatim durante vita ipsius Edwardi Grimstone ad magnam Garderobam suam Hæredum & Successorum suorum pro tempore existen. cum omnibus aliis proficiis commoditatibus & advantagiis quibuscunq; prout in eisdem literis patentibus (inter alia) plenius continebatur. Et ulterius in eisdem literis patentibus hic in Curia prolata recitan. quod cum præcharissimus pater suus per literas suas patentes geren. dat apud Westm. vicesimo die Martii Anno Regni sui Angliæ, &c. quinto decimo pro se Hæredibus & Successoribus suis dedisset & concessisset cuidem Johanni Hunt dictum Officium unius Servien. suorum ad arma pro termino vite suæ & quod esset specialiter attend. circa personam suam extra tempus Parliamenti sui & quod ipse tempore cujusslibet Parliamenti esset attenden. super Prolocutorem elect. sive eligend. per Communes Regni Angliæ in singulis Parliamentis suis Hæredum & Successorum suorum convocand. Habend. & tenend. dictum Officium præfat. Johanni Hunt durante vita sua naturali immediate post mortem sursumredition. vel forisfacturam aut alio quocunq; modo vacaret seu ad manus dicti patris sui Hæredum vel Successorum suorum devenire contingeret ac habend. & percipiend. eidem Johanni Hunt & Assign. suis pro exercitio & occupatione Officii præd. duodecim denarios legalis monete Angliæ per diem à tempore quo Officium præd. ut præfertur vacaret pro tempore vite naturalis dicti Johannis Hunt de Thesauro suo Hæredum & Successorum suorum per manus Thesaurarii & Camerarii suorum Hæredum & Successorum suorum ibidem pro

pro tempore existen. ad quatuor Anni Terminos videlicet ad festa natiuitatis Sancti Johannis Baptistæ Sancti Michaelis Archangeli Natalis Domini & Annunciationis Beatae Mariæ Virginis per æquales portiones solvend. prima solutione inde incipiend. ad illud festum festorum præd. quod primo & proxime eveniret postquam præfat. Johannes Hunt Officium præd. gauderet virtute earundem literarum patentium secundum veram intentionem earundem. Et insuper pater suus pro se & Hæredibus & Successoribus suis concessisset præfat. Johanni Hunt liberam suam vesturam de sectis aliorum servientum suorum ad arma percipiend. annuatim durante vita ipsius Johannis Hunt ad magnam Garderobam suam Hæredum & Successorum suorum ad festum Natalis Domini per manus Custodis dictæ Garderobæ suæ Hæred. & Successorum suorum pro tempore existen. immediate & quam cito Officium præd. ut præfertur vacaret cum omnibus aliis proficuis commoditatibus & advantagiis quibuscunq; in tam amplis & consimilibus modis & formis prout Thomas Hale & Richardus Bowyer aut prænominat. Edwardus Grimstone aut aliquis alius sive aliqui dictum Officium ante tunc haben. & exercen. habuit percepisset vel gavisus fuisset habuissent percepissent vel gavisi fuissent aut habere percipere vel gaudere debuissent aut debuisset in & pro exercitio ejusdem Officii prout per easdem literas patentes plenius liquebat & apparebat. Quodq; præd. Edwardus Grimstone ut idem nuper Dominus Rex Carolus acceperat diem suum clausisset extremum idem nuper Dominus Rex Carolus pro & in consideratione boni & acceptabilis servitii eidem nuper Domino Regi Carolo per prædict. Michaellem antetunc fact. & impens. ac pro aliis bonis causis & considerationibus eundem nuper Dominum Regem Carolum adtunc præsen. moven. de gratia sua speciali ac ex certa scientia & mero motu suis per prædictas literas patentes hic in Curia prolat. pro se Hæredibus & Successoribus suis dedit & concessit præfat. Michaeli Crake adtunc & adhuc existen. idoneæ personæ Officium præd. cum pertinen. superius primo mentionat. exequend. viz. præd. Officium unius Servien. suorum ad arma pro termino vitæ suæ & quod esset specialiter attenden. circa personam Domini Regis extra tempus Parliamenti sui & quod ipse tempore

tempore Parliamenti cujuslibet esset attenden. super Prolocutorem elect. sive eligend. per Communes Regni Angliæ in singulis Parliamentis ejusdem nuper Domini Regis Caroli Hæredum vel Successorum suorum convocand. Habend. & tenend. dictum Officium præfat. Michaeli Crake durante vita sua immediate post mortem præd. Johannis Hunt vel cum & quam cito Officium illud per mortem sursumredditionem vel forifakturam aut alio quocunq; modo vacaret seu ad manus ejusdem nuper Regis Caroli vel Successorum vel Hæredum suorum devenire contingeret ac habend' & percipiend. eidem Michaeli Crake & Assign. suis pro exercitio & occupatione Officii præd. duodecim denarios legalis monetæ Angliæ per diem à tempore quo Officium præd. ut præfertur vacaret pro termino vitæ naturalis dicti Michaelis Crake de Thesauro ejusdem nuper Domini Regis Caroli Hæredum & Successorum suorum per manus Thesaurarii & Camerarii ejusdem nuper Domini Regis Caroli Hæredum & Successorum suorum ibidem pro tempore existen. ad quatuor anni terminos videlt. ad festa natiuitatis Sancti Johannis Baptiste Sancti Michaelis Archangeli Natalis Domini & Annunciationis Beatæ Mariæ Virginis per æquales portiones solvend. prima solutione inde incipiend. ad illud festum festorum præd. quod primo & proxime eveniret postquam præfat. Michael Crake Officium præd. gauderet virtute præd. literarum patentium ejusdem nuper Domini Regis Caroli hic in Curia prolat. secundum veram intentionem earundem. Et insuper idem nuper Dominus Rex Carolus per easdem literas patentes hic in Curia prolat. pro se & Hæredibus & Successoribus suis concessit præfat. Michael. Crake liberam suam vesturam de sectis aliorum servientium suorum ad arma percipiend. annuatim durante vita ipsius Michaelis Crake ad magnam Garderobam ejusdem nuper Domini Regis Caroli Hæredum & Successorum suorum ad festum Natalis Domini per manus Custodis dictæ Gardarobæ ejusdem nuper Domini Regis Caroli Hæredum & Successorum suorum pro tempore existen. immediate & quam cito Officium præd. ut præfertur vacaret cum omnibus aliis proficuis commoditatibus & advantagiis quibuscunq; in tam amplis & consimilibus modo & forma prout Thomas Hale Radulphus Bowyer aut Edwardus Grim-

*The Assise taken
by Default.*

stone vel Johannes Hunt aut aliquis alius sive aliqui alii dictum Officium ante eadem tempora habens & exercens legitime habuit percepit vel gavisus fuit habuerunt perceperunt vel gavisi fuerunt aut habere percipere vel gaudere debuissent. aut debuisset in & pro exercitio ejusdem Officii prout per easdem literas patentes hic in Curia prolat. plenius liquet & apparet Posteaq; scilt. primo die Maii Anno Regni Domini Caroli Secundi nunc Regis Angliæ, &c. duodecimo apud Westm. præd. in Com. præd. prædict. Johannes Hunt obiit post cujus quidem Johannis Hunt mortem apud Westm. præd. in Com. Midd. prædict. idem Michael Crake Officium præd. unius Servien. Domini Regis ad arma in se suscepit. Ac idem Michael Crake Officium illud cum pertin. habuit tenuit exercuit occupavit & gavisus fuit ac inde fuit seifit. virtute literarum patentium præd. hic in Curia prolat. in Dominico suo ut de libero tenemento pro termino vitæ naturalis ipsius Michaelis quousq; præd. Jacobus Northfolke ipsum Michaellem de Officio suo præd. cum pertinentiis injuste & sine judicio apud Westm. præd. disseifivit. Et unde petit Assisam, &c. Et præd. Jacobus Northfolke solemniter exact. non venit & Vic. mand. quod attach. est per plegios Samuel. Crooke & Robertum Bradham. Ideo ipsi in misericordia, &c. Et Assisa capiatur versus eum per default, &c. super quo Recognitores exact. vener. qui ad veritatem de præmissis dicend. electi triat. & jurat. dicunt super sacram. suum quod præd. Michael Crake fuit seifit. de Officio præd. in visueorundem Recognitor. præd. posito & in loquela præd. specificat. pro termino vitæ suæ ut de libero tenemento quousq; præd. Jacobus Northfolke ipsum Michael. inde injuste & sine judicio sed non vi & armis disseifivit & affident damna ipsius Michaelis occasione disseifinæ prædict. ultra Misas & custagia sua per ipsum circa sectam suam in hac parte apposit. ad decem solid. & pro misis & custagiis ill. ad quadragint. solid. Ideo consideratum est quod præd. Michael recuperet versus præfat. Jacobum seifinam Officii præd. in loquela Assisæ illius specificat. cum pertinen. per visum eorundem Recognitorum, &c. ac damna sua præd. per eosdem Recognitores & præd. quinquaginta solidos in forma præd. assess. necnon triginta & septem libras & decem solidos pro misis

mis & custagiis suis prædict. eidem Michaeli ad requisitionem suam per Curiam dicti Domini Regis nunc hic de incremento adjudicat. Quæ quidem damna in toto se attingunt ad quadraginta libras Et præd. Jacobus in misericordia, &c.

Crake versus Northfolke mil.

The Plaintiff declared that the Defendant disseised him of the Office of one of his Majesty's Serjeants at Arms, specially attending his Person in the Intervals of Parliament, and on the Speaker of the House of Commons every Sessions; and for his Title to the said Office he sets forth, That the same is an ancient Office grantable by the Kings and Queens of England, under the Great Seal, to any fit Person, for Term of Life, as well in Possession as in Reversion; to which Office there belongeth an House at Westminster, where the Commons of England assembled in Parliament do usually sit; which House is to be supervised and kept by the said Officer, by Virtue of his said Office.

Then he sets forth, That on the 11th of July, in the 19th Year of King Charles the first; John Hunt Esq; by Virtue of a Grant to him made of the said Office by Letters Patent of King James, under the Great Seal, was seised of the said Office for Term of his Life; and being so seised, King Charles the First, by his Letters Patent, &c. (after several Recitals therein mentioned) in Consideration of the good Services done by the Plaintiff, and for other good Considerations did grant to the Plaintiff, (then being a fit Person) the said Office with the Appurtenances for Term of his natural Life, to hold the same after the Death of the said John Hunt, and to receive the Profits incident to the same.

That

That on the first Day of May, Anno 12 Car. 2. the said John Hunt died; after whose Death the Plaintiff did take upon himself the Execution of the said Office, and held and enjoyed the same, and was thereof seised by Virtue of the said Letters Patent in his Demesne as of a Freehold for Term of his Life, until the Defendant unjustly disseised him thereof.

This Assise was taken by Default.

The Recognitors appearing at Bar, the first Thing necessary to be proved by the Plaintiff is, That the Defendant had Notice of the bringing this Writ of Assise against him; and for that Purpose the Plaintiff's Attorney ought to make a Copy of the Writ, and write Notice under it, that the Writ is brought against the Defendant; which he is to deliver to the Defendant, or his Attorney, soon after it is brought, and to keep an attested Copy thereof, ready to be produced at the Trial.

The next Thing is to produce the Patent made to the Plaintiff, and then to prove that John Hunt, who had the Office when the Grant was made to the Plaintiff, is now dead.

Then the Plaintiff ought to prove that he was seised of this Office; which he may do, by proving that he received some of the Profits: As for Instance, If any Person hath been committed to his Custody, by an Order of the House of Commons for a Breach of Privilege, he must prove the Order for the Commitment, examined by the Book of the Clerk of the Parliament; and that the Person so committed paid 20 s. or any other Sum to him in Part of his Fees.

He likewise ought to prove a Demand made by him to execute the Office which the Plaintiff did in this Case, by laying his hand on the Mace, requiring the same, as the Defendant was carrying it before the Speaker.

It may be necessary likewise to prove that the Plaintiff is qualified for the Office by taking the Oaths and Sacrament as required by Law, which he may prove by a Certificate thereof.

And it may also be necessary for him to produce Copies of the Letters Patent granted to Grimstone and Hunt, which was recited in the Pleadings; which Copies ought to be examined and attested.

These Proofs being necessary to make out his Title and Seisin, the next Thing he is to prove is, that the Defendant disseised him; for which Purpose he ought to prove, that there belong several Rooms to the Office, (which are also set forth in the Pleading) and that the Defendant had the Custody of those Rooms, and made several Profits thereof by suffering Persons to lodge therein, and by shewing the House where the Parliament sits to several Persons, and receiving Money for the same; and that after the last Prorogation of Parliament the Plaintiff demanded the Place and the Execution of the said Office, but the Defendant did refuse, and still continued to execute the same, and by Reason thereof entitled himself to the Fee of one Shilling per diem, and that he kept the Possession of the Rooms, and received the Profits by shewing the House, &c.

And if the Plaintiff should bring an Action for the mean Profits before he brought the Assise, and recover Damages therein, he may prove it by the Record; but this will mitigate the Damages to be given in the Assise.

ASSISE

OF NUSANCE.

Langley & al' versus Norris & al'.

Placita coram Domino Rege apud Westm. de Termino Sancti Michaelis Anno Regni Domini nostri Jacobi Secundi Dei Gratia Angliæ Scotiæ Franciæ & Hiberniæ Regis Fidei Defensoris, &c. quarto. Teste Roberto Wright, Mil. Rot. 518.

Midd. ff.

ASSISA venit recognitur. si Samuel Norris nuper de Parochia Sancti Leonardi Shoreditch in Com. Midd. præd. Gen. Johannes Cox nuper de Paroch. Sancti Botolph. Bishopsgate London. Faber Lignar. & Richardus Franklyn nuper de Paroch. S. Bartholomæi le Grand London. injuste & sine judicio levaverunt quandam domum in parochia Sancti Leonardi Shoreditch ad nocumentum liberi tenementi Johannis Langley Ar. & Thomæ Langley Mercatoris in eadem Parochia infra triginta Annos jam ult. elaps. &c. Et unde

de idem Johannes Langley & Thomas Langley per Thomam Marriott Attorn. suum queruntur quod cum præd. Johannes Langley & Thomas Langley vicesimo die Junii Anno Regni Domini Jacobi Secundi nunc Regis Angliæ, &c. quarto & continue abinde hucusq; seisit. fuerunt & adhuc seisit. existunt de & in uno mesuagio cum pertin. in prædict. parochia Sancti Leonardi Shoreditch in Com. Midd. præd. in dominico suo ut de feodo præd. Samuel Johannes Cox & Richardus postea infra triginta Annos, &c. scilt. vicesimo die Junii Anno supradicto quandam domum apud prædict. paroch. Sancti Leonardi Shoreditch prope præd. mesuagium ipsorum Johannis Langley & Thomæ ibidem de novo ædificari fecerunt & pro supportatione grossi maheremii præd. domus de novo edificat. diversa foramina in muris præd. mesuagii ipsorum Johannis Langley & Thomæ fieri & grossum maheremium illud videlt. quadraginta trabes permagni ponderis in illa foramina poni & locari causaverunt in mesuagii præd. ipsorum Johannis Langley & Thomæ maximam debilitationem & murorum ejusdem vastum & destructionem non modicum Necnon præd. Samuel Johannes Cox & Richardus domum præd. de novo ædificat. in tantum exaltaverunt & tectum ejusdem suprapendere tresdecim pedes in longitudine & unum pedem in latitudine tecti præd. mesuagii ipsorum Johannis Langley & Thomæ adtunc & ibidem fecer. quod aquæ pluviales de prædicta domu de novo ædificat. super tectum mesuagii præd. Johannis Langley & Thomæ cadentes & aliæ aquæ pluviales super tectum illud simil. descender. ob defectum passagii de tecto illo in præd. mesuagium ipsorum Johannis Langley & Thomæ distillaverunt & muros & asseres & concamerationes ejusdem mesuagii corruerunt vastaverunt & spoliaverunt ob quod quidam Arthur Bernardiston qui ante ædificationem præd. domus de novo edificat. tenuit præd. mesuagium ipsorum Johannis Langley & Thomæ ad annualem redditum quadraginta librarum eis proinde solvend. modo in eodem Mesuagio ob præd. debilitat. inde & distillationem aquarum pluvialium præd. in eadem morari non audet iidemq; Johannes Langley & Thomas occasion præd. totum redditum & proficua mesuagii sui præd. totaliter perdere & amittere omnino veri-

verisimiles sunt Ad nocumentum, &c. Et inde petunt Affisam, &c.

The Affise taken by Default.

Et præd. Samuel Norris Johannes Cox & Richardus Franklyn solemniter exact. non venerunt Et Vicecomes modo mand. quod attachiati sunt & quilibet eorum attachiat. est per plegios Johannem Doe & Richardum Fenn. Ideo ipsi in misericordia Et Affisa præd. capiatur versus eos per default. &c. Et Recognitor. Affisa præd. exact. venerunt qui ad veritatem de præmissis dicend. elect. jurat. & triat. dicunt super Sacramentum suum quod præd. Johannes Langley & Thomas Langley fuerunt seisit. in dominico suo ut de feodo de mesuagio præd. in Visum eorundem Recognitorum posito & in querela præd. specificat. cum pertinen. prout idem Johannes Langley & Thomas Langley superius allegaverunt. Et ulterius Recognitores præd. dicunt quod præd. Samuel Johannes Cox & Richardus injuste & sine iudicio, &c. præd. Domum in Visum eorum Recognitorum positam & in querela præd. specificat. prope mesuagium præd. ædificari facere pro supportatione grossi maheremii præd. domus foramina præd. in muris præd. dicti mesuagii fieri & grossa maheremia præd. in foramina illa poni & locari causaverunt in mesuagii præd. maximam debilitationem & murorum præd. vastum & destructionem non modicum Necnon præd. Samuel Johannes Cox & Richardus præd. domum in tantum exaltaverunt & tectum ejusdem suprapendere tresdecim pedes in longitudine & unum pedem in latitudine tect. mesuag. præd. fecerunt quod aquæ pluviales de præd. domo super tectum mesuagii præd. cadentes & aliæ aquæ pluviales super tectum ill. similiter descendentes ob defectum passagii de tecto illo in mesuagium præd. distillaverunt & præd. muros asserses & concamerationes ejusdem mesuagii corruerunt vastaverunt & spoliaverunt prout præd. Johannes Langley & Thomas Langley superius allegaver. Et assid. damna ipsorum Johannis Langley & Thomæ Langley occasione nocumenti præd. ultra misas & custagia sua per ipsos circa sectam suam in hac parte apposit. ad quadraginta libras & pro misis & custagiis ill. ad quadraginta solid. Ideo consideratum est quod nocumentum illud amoveatur & præd. grossum maheremium

maheremium domus præd. positum & locatum in foramina præd. fact. in muris mesuagii præd. exinde capiuntur & foramina illa lateribus & cemento impleantur & emendentur ad propria custagia præd. Samuel. Johannis Cox & Richardi necnon ad similia custagia tresdecim pedes in longitudine & unus pes in latitudine præd. tecti dict. domus abatementur ita quod tectum domus præd. non suprapendeat tectum mesuagii Et ulterius cons. est quod præd. Johannes Langley & Thomas Langley recuperent versus præfat. Samuelem Johannem Cox & Richardum damna sua prædicta per Recognitores in forma præd. assessa necnon triginta & sex libras pro missis & custagiis suis præd. eisdem Johanni Langley & Thomæ Langley per Curiam dicti Domini Regis nunc hic ex assensu suo de incremento adjudicat. quæ quidem damna in toto se attingunt ad septuaginta & octo libras & præd. Samuel Johannes Cox & Richardus in misericordia, &c.

Langley & al' versus Norris & al'.

This was an Assise for a Nufance brought against the Defendants for building a new house so near that of the Plaintiff's that they made holes in his Walls, in which they put the Timber of the new house; and this very much weakened the said Walls; and they built the new house so high, that it hanged above the Roof of the other thirteen foot, &c. inso-much that the Rain dropping on the said Roof, for want of some Passage to carry it off, did so very much damage the Walls, and the Timber of the old house, that the Tenant could live in it no longer; so that the Plaintiff was likely to lose all his Rent, &c.

This Assise was taken by Default, which was very hard upon the Defendant Norris; for if he had appeared and pleaded Non se interfuit, he must have been acquitted, because the Nufance was done by the other two Defendants, and not by Norris, who had the Inheritance of the Ground, and let it to them upon a building Lease.

P

But

But because in an Affise of Nufance the Tenant of the Freehold must always be made a Defendant, as well as the Wrong-doers; therefore Norris, who had the Inheritance, was slightly summoned by the Sheriff; and he being in no wise Guilty of the Injury done to the Plaintiff, took no Care to make any Defence till it was too late; therefore, after the Default, he by his Counsel moved the Court to be let in to plead, alledging that he was not summoned; and after several Motions, it was denied by the Court upon great Consideration, who told him, That if he was not summoned, he must take his Remedy against the Sheriff; but if he had Notice of the Writ brought against him, then it was his own Fault not to appear and make his Defence; and so Judgment was given against him who did not commit the Nufance, nor was any Ways privy to it, as well as against the other Defendants by whom it was actually done.

Thereupon the Defendant Norris intending to bring a Writ of Error in Parliament, advised with several of the most eminent Counsel upon this Declaration; which was drawn by Sir John Holt, afterwards chief Justice of England, but could have no Encouragement to proceed, because no Error was found in it.

This Precedent seems to be drawn by Penruddock's Case; which was thus: A Freeholder levied a new House upon his own Land, so near his Neighbour's House, quod domus illa superpendebat magnam partem, viz. tres pedes domus præd' (of his Neighbour); but then it goes further, for both the Freeholder and his Neighbour sold their Houses, and the Vendee of the old House brought a Quod permittat against the Feoffee of the new House, in which he declared that the Water distilled and descended from the new House upon the old one ad nocumentum, &c.

Now, tho' a Quod permittat properly lies by the Heir of him who died seised of the Inheritance against the Heir of him who levied the Nufance, yet it was a Question whether it would lie by the Vendee of the old House

House against the Feoffee of the new one, because the Vendor, against whom the Wrong was done, having conveyed all his Title and Interest to the Vendee, he was bound to take the House in the same Condition as it was conveyed to him; and so no Injury was done.

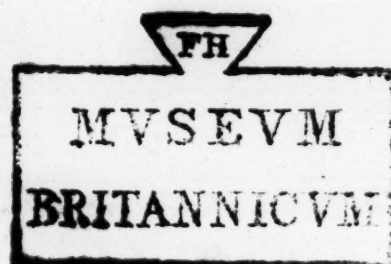
But it was adjudged that the Distilling of the Water upon the old House, after the Purchase, was a new Wrong done to the Purchaser, and the Permission of such Wrong to continue is punishable by him against the Feoffee of the new House, and that if it is not abated after Request made, then a Quod permittat lieth by the Vendee of the old House: and he shall recover Damages; but it would lie without any Request against him who actually did the Nufance.

It was likewise resolved in that Case that the Vendee of the old House might abate the Nufance as well as the Vendor himself might have done; and that when the new House was in the Possession of the Feoffee, who purchased it, as when it was in the Hands of the Feoffor, who sold it, and who did actually commit the Nufance.

I find that in almost all the Precedents of Assises for Nufances, especially for building new Houses ad nocumentum of the old; the Form is, That the Defendant levavit quendam domum, &c. The Words edificavit, or erexit, which seem more proper, are seldom or never used; for there is a very extraordinary Distinction made by the Court between these Words, viz. Levavit is when an entire new House is built from the Ground, but erexit, or edificavit, is where only Part of an House is built.

As this Distinction is no where to be found but in our Law-Books, so it is unluckily applied in that very Case where it was first made; which was thus:

¶ An Assise was brought against the Defendant, &c. The Jury found that he levavit quendam domum, &c. which, according to this Distinction, must be a whole House,



House, but that only two Foot thereof were ad nocu-
mentum of the Plaintiff, &c. And if ſo, then the De-
fendant non levavit domum, &c. That is, he did not
build the whole Houſe ad nocumentum, &c. as the Plain-
tiff had declared, ſo that this Verdict was repugnant in
it ſelf; but yet the Judgment was, that the two Foot
only ſhould be abated; ſo that here neither the finding
of the Jury, or the Judgment of the Court, did agree
with that Diſtinction. Godb. 233. Trahearn's Caſe.

Besides, in the very ſame Book in Gile's Caſe, where
the Court diſtinguiſhed once more between erigere and
exaltare, there they were all of Opinion that erigere was
de novo facere, as well an entire Houſe as any Part
of it; but exaltare was ad majorem altitudinem attol-
lere erectum; and in this very Precedent, which was
ſo well drawn, it is levavit in the Beginning, but af-
terwards it is de novo ædificavit. And in 21 Ed. 3, 2.
cited in Godb. Caſe 5. where an Affiſe of Nuſance was
brought, for ſtraitening of a Way, which the Plaintiff
ought to have to his Mill: The Defendant pleaded
Unity of Poſſeſſion of the Land and Mill in W. and de-
manded Judgment of the Writ; the Plaintiff replied,
That W. had two Daughters, who were Coheirs; and
that after his Death (he dying ſeiſed of the whole) the
Mill was allotted to one Daughter, and the Land to
the other in Partition, and that the Way was reſerved
to her who had the Mill: It was adjudged that the
Way was reſerved, and muſt be as it was before; the
Reason may be, becauſe it was ſpecially reſerved upon
the Partition, for otherwiſe it had been gone by the
Unity of Poſſeſſion; and ſo it was adjudged in Robins
and Barnes in Hob. 131: Which was thus:

In a Quod permittat proſternere quendam domum,
which was new built, and hindered the Light from
coming into the Houſe adjoining, by overhanging it;
upon the Iſſue and Verdict it appeared that the Defen-
dant had built the new Houſe upon an old Foundation
of another Houſe formerly built there, and now pulled
down by him who was the Owner of both Houſes: And
it

it was adjudged that by this Unity of Possession of both Houses in one Man the Causement was suspended, so as the Defendant could not be charged in Damages, but where he caused the new House to hang over more than it did before; for the Causement of having the Light to come to the old House being once suspended is gone for ever, tho the Houses afterwards come to the Possession of several Men.

In Cro. Eliz. 520. between Belwick and Curden, there was an Action on the Case brought against the Defendant for keeping and maintaining quoddam molam in a Brook, by Reason whereof the Plaintiff's Lands were drowned: And it was then adjudged that this Action would not lie, but a Quod permittat; and the Reason was, because that was the proper Writ, and that an Action on the Case should never lie where the Plaintiff had any other Remedy by a proper Writ in the Register.

But this Reason did not then, or ever since, prebail for Affises of Nufances; and in many other Cases where there are proper Writs in the Register, are now turned into Actions on the Case: This is so obvious to every Practiser, that it would be impertinent now to offer this for a Reason why it should not be so; and therefore I shall mention but one Case more concerning a Nufance, which may be requisite for every one to know.

A. A Freeholder in the Manor of D. built a new Pidgeon-house upon his own Land, and stocked it with Pidgeons, which he suffered to fly out: This was presented at the Leet for a Common Nufance, and the Man was amerced to 40s. and a further Penalty was imposed on him, viz. That he should pay 10 l. if he did not stop it up before such a Day; which was not done; and this being presented at the next Court, there was then 12 l. imposed upon him, and a Distress taken for Non-payment; whereupon he gave Bond to pay the Money, and had his Cattle again, and afterwards brought an Action of Trespals for taking his

Q

Cattle

Cattle and detaining them till he had given Bond for the Payment of the Money : And all this Matter appearing upon the Pleading, it was adjudged that this was not a Nufance Inquirable in a Leet, neither was it a Common Nufance ; for if it was, then a Lord of a Manor, or a Rector of a Church, could no more prescribe to build a Pidgeon-house than a Freeholder could, because no Man can prescribe to make a Common Nufance ; and it is plain that the Law will never construe that to be a Common Nufance which it expressly protects, and those are Pidgeons ; for it inflicts a very severe Penalty upon those who destroy them. 2 Cro. 491. Dewell versus Saunders, Poph. 141. same Case.

ASSISE

FOR THE

Office of a Register.

Hearne versus Reynolds & al.

Guilielmus Tertius Dei Gratia Angliæ Scotiæ ^{The Writ of} Franciæ & Hiberniæ Rex Fidei Defensor ^{Assise.}
 Vic. Hereford salutem Questus est nobis Gilbertus Hearne Gen. quod Griffith Reynolds Gen. & Willielmus Dobson in artibus magister injuste & sine iudicio disseisiver. eum de libero tenemento suo in Hereford infra triginta Annos jam ultimo elaps. Et ideo tibi præcipimus quod si præd. Gilbertus fecerit te securum de clameo suo prosequend. tunc facias tenementum illud reseisiri de catallis quæ in ipso capta fuerunt & ipsum tenementum cum catallis esse in pace usque ad primam Assisam cum Justitiarum nostri in partes illas venerint & interim facias duodecim liberos & legales homines de vicineto illo videre tenementum illud & nomina eorum imbrevari & summoneas eos per bonos summonitores quod tunc sint coram præfat. Justitiariis ad præfat. Assisam paratos inde facere Recognitionem & pone per vadios & salvos plegios præd. Griffith & Williel-

& Willielmum vel Ballivum suum si ipsi invent. non fuerint quod tunc sint ibi ad audiend. illam Recognitio- nem & habeas ibi summonitorum nomina plegios & hoc breve Teste meipso apud Westm. primo die Fe- bruarii Anno Regni nostri septimo.

Pleg. de prof. { Johannes Doe.
Richardus Roe.

*The Return of
the Writ.*

Infranominat. Griffith Reynolds & Willielmus Dobson non sunt invent. nec eorum Attorn. est invent. in Balliva mea sed Tamberlain Hords Ballivus præd. Griffith Reynolds & Willielmi Dobson attach. est

Per plegios { Willielmum Bullock.
Johannem Rous.

Residuum executionis istius brevis patet in quodam pannello huic brevi annex.

Respons. Johannis Long. Ar. Vic.

*Ulrichus Tertius Dei Gratia Angliae Comes
Francie & Hibernie Rex Fidei Defensor*
Vic. Hereford salutem Quæritur est nobis Gil-
bertus Hearne de libero tenemento suo in
Hereford infra triginta annos, &c. Et unde idem Gilbertus in pro-
pria persona queritur quod præd. Griffith & Willielmus
disseisiver. eum de Officio Registerii sive Registeriat.
Episcopi Hereford & Successorum suorum Episcoporum
Hereford

Hereford in & per totum Diocesin & jurisdictionem
 Hereford & scribæ five scribatus quorumcunq; Actorum
 judicial. & extrajudicial. processuum causarum litium
 instantiar. promotion. & negotiorum cujuscunq; sint ge-
 neris naturæ seu qualitatis ex Officio mero motu vel pro-
 moto & ad alicujus partis instantiam tam in Curia Con-
 sistorii Episcopal. Hereford quam alibi infra dict. Dio-
 cesin & Jurisdiction. Hereford coram Episcopo Hereford
 & Successoribus suis Epis. Hereford suove aut suorum
 Successorum vicario in spiritualibus general. Ac etiam
 Official. principal. ac præsiden. Consistorii præd. aut Com-
 missar. General. Episcopi Hereford & Successorum suo-
 rum eorumq; cujuscunq; seu utriusq; Deputato seu Deputa-
 tis Substituto vel Substitutis vel Surrogato five Surroga-
 tis quoquo modo autoritate Episcopi Hereford & Succes-
 sorum suorum Episcoporum Hereford ordinar. agitatur.
 mot. & tractatur. five agend. movend. & tractand. ac
 etiam custod. omnium & singulorum Registorum Archi-
 vorum actorum librorum instrumentorum scriptorum
 aliorumq; exhibition. aut exhibend. Episcopi Hereford
 ac Predecessorum & Successorum suorum Episcoporum He-
 reford quorumcunq; ad dictum Officium spectant. tangen-
 ti seu concernen. cum pertin. & pro titulo liberi tenemen-
 ti de Officiis præd. cum pertin. & Affisam præd. habend.
 idem Gilbertus dicit quod Officia præd. sunt antiqua
 Officia infra Civitat. Diocesin & jurisdiction. Episcopi
 Hereford. videlt. apud Hereford in Com. Hereford ac
 concess. & concessibilia cuicunq; personæ idoneæ & suffi-
 cienti per Episc. Hereford sub sigillo suo Episcopali pro
 termino Vitæ talis personæ quodq; Gilbertus Episc. He-
 reford per quoddam scriptum suum geren. dat. vicesimo
 quinto die Septembris Anno Domini millesimo sexcen-
 tesimo nonagesimo quarto sub sigillo Episcopali suo sigil-
 lat. apud Hereford præd. in Com. præd. pro se & Suc-
 cessoribus suis Episcopis Hereford dedit & concessit præ-
 fat. Gilberto Hearne per nomen Gilberti Hearne Notarii
 Publici Officium præd. adtunc & ibidem vacans existen.
 & præd. Gilberto Hearne adtunc existen. persona idonea
 & sufficien. ad præd. Officium tenend. & exercend.
 præd. Officium Registrarii five Registratus præd. Epis.
 Hereford & Successorum suorum Episcoporum Hereford
 in & per totum Diocesin & jurisdiction. Hereford &

R

scribæ

scribæ sive scribatus quorumcunq; actuum judicialium & extrajudicialium processus causarum litium instantiar. promotionum & negotiorum cujuscunque sint generis naturæ seu qualitatis ex Officio mero motu vel promotio & ad alicujus partis instantiam tam in Curia Consistorii Episcopalis Hereford quam alibi infra dictam Diocesim & jurisdiction. Hereford coram dicto Episc. Hereford & Successoribus suis Episcopis Hereford suove aut Successorum suorum vicario in spiritualibus general. ac etiam coram Official. principal. & præsiden. Consistorii prædict. aut Commissario generali dicti Episcopi Hereford & Successorum suorum & eorum cujuscunque seu utriusque Deputato seu Deputatis Substituto seu Substitutis vel Surrogato vel Surrogatis quocunq; modo autoritate præd. Episcopi Hereford & Successorum suorum Episcoporum Hereford ordinar. agit. mot. & tractat. sive agend. movend. & tractand. quibuscunque nominibus censeantur cum omnibus & singulis Vadiis salar. feodis proficuis emolumentis & commoditat. quibuscunq; præmissis & eorum cuilibet de jure vel consuetudine aut aliquo alio modo legitime debit. incumben. pertinen. sive quocunq; modo spectan. ac etiam custodiam omnium & singulorum Registorum Archivorum Actuum librorum Instrumentorum Scriptorum aliorumque exhibitorum aut exhibend. dict. Episcopi Hereford & Successorum suorum Episcoporum Hereford quorumcunq; ad dict. Officium aliquo modo spectan. tangen. seu concernen. una cum omnibus & singulis vadiis salar. feodis proficuis emolumentis & commoditat. quibuscunq; ad custodiam illam ad vel ratione eorund' Registorum Archivorum Actuum Librorum Instrumentorum Scriptorum Exhibitorum & Exhibendorum spectan. sive pertinen. Habend. & tenend. dicta Officia Registrarii sive Registeriatus & scribæ sive scribatus & custodiam præd. omnium & singulorum Registorum Archivorum Actuum librorum Instrumentorum Scriptorum Exhibitorum & Exhibend. aliaque omnia & singula præmissa de præd. Episcopo Hereford & Successoribus suis Episcopis Hereford præfat. Gilberto Hearne & assign. suis pro & duran. termino vitæ naturalis ejusdem Gilberti Hearne atq; eadem Officia exercend. occupand. & gaudend. per seipsum vel ejus sufficien. Deputatum vel Deputatos pro & duran. toto termino

mino vitæ naturalis ejusdem Gilberti Hearne libere inconcussè pacifice & quiete cum omnibus & singulis Vadiis salar. feodis proficuis commoditat. & emolumentis eisdem Officiis aliisque præmissis & eorum cuilibet de jure aut consuetudine debti. incumben. pertinen. sive aliquo modo legitime spectan. in suos proprios usus recipiend. & convertend. in tam amplis modo & forma prout aliquis alius Registrarius aut scriba seu aliqui alii Registrarii sive scribæ præd. Episcopi aut Prædecessorum suorum dict. Officia & cætera præmissa omnia & singula habuerunt tenuerunt exercuerunt gavisi fuerunt occupaverunt receperunt vel in proprios suos usus converterunt aut eadem habere exercere gaudere occupare recipere sive convertere de jure vel quocunq; modo legitimo debuerunt vel potuerunt seu ullus aut aliquis eorum debuit seu potuit durante præd. termino vitæ naturalis præd. Gilberti Hearne absque contradictione restrictione reclamatione vel impedimento præd. Episcopi Hereford aut Successorum suorum prout per scriptum præd. hic in Curia prolatur. plenius apparet (Officiis præd. tempore concessionis præd. vacuis existen.) videlt. apud Hereford præd. in Com. præd. Virtute cujus quidem concessionis idem Gilbertus Hearne seiscit. fuit de Offic. præd. una cum omnibus & singulis vadiis salar. feodis proficuis emolument. & commoditat. quibuscunq; dict. offic. spectantibus ut de libero tenemento pro termino vitæ suæ quousq; præd. Griffith Reynolds & Willielmus Dobson ipsum Gilbertum de Officiis illis injuste & sine judicio disseisiverunt videlicet apud Hereford præd. in Com. præd. Et inde petit Assisam, &c.

Et præd. Willielmus Dobson & Griffith Reynolds per Henricum Jones Attorn. suum ven. & habito audit. Brevis & narrationis salvis eis omnibus exceptionibus tam ad Breve quam ad Narr. præd. petunt licentiam inde interloquendi usque diem Lunæ decimum sextum diem Martii tunc prox. sequen. hora undecima ante merid. ejusdem diei apud Le Townhall in Hereford. in Com. præd. & habent, &c. Idem dies & hora dat. sunt præfat. Gilberto ibidem, &c. Ad quos quidem diem & horam coram præfat. Justitiariis Domini Regis ad Assisas apud Le Townhall in Hereford præd. ven. tam præd.

*Further
importance.*

*Demurrer to
the Declara-
tion by one De-
fendant.*

præd. Gilbertus in propria persona sua quam præd. Willielmus & Griffith per Attorn. suum præd. Et præd. Willielmus & Griffith ulterius petunt licentiam unde interloquendi usq; ad horam tertiam post meridiem ejusdem diei apud Le Townhall præd. in Hereford præd. & habent, &c. eadem hora dat. est præfat. Gilberto ibidem, &c. Ad quam horam coram præfat. Justitiariis Domini Regis ad Assisas apud Le Townhall in Hereford præd. ven. tam præd. Gilbertus in propria persona sua quam præd. Willielmus & Griffith per Attorn. suum præd. & præd. Griffith Reynolds per præd. Henricum Jones attornatum suum dicit quod præd. narratio materiaq; in eadem content. minus sufficien. in lege existunt ad Assisam illam manutenend. quodq; ipse ad narrationem præd. modo & forma præd. factam necesse non habet nec per legem terræ tenetur aliquo modo respondere Et hoc parat. est verificare Unde pro defectu sufficientis narrationis in hac parte petit iudicium de narratione præd. & quod narratio illa cassetur, &c.

Et præd. Gilbertus ex quo ipse sufficientem materiam ad Assisam præd. manutenend. superius narrando allegavit quam ipse parat. est verificare quam quidem materiam præd. Griffith non dedit nec aliquam ad eam respond. idem Gilbertus petit iudicium & quod procedatur inde versus præd. Griffith ad caption. Assisæ præd. &c. Et quia præfat. Justitarii Domini Regis ad Assisas hic de iudicio suo de & super præmissis unde præd. Gilbertus & Griffith superius in iudicio Cur. se posuerunt reddend. nondum advisantur dies inde dat. est per eandem Curiam præfat. Gilberto & Griffith coram præfat. Justitiariis ad Assisas usque diem Martis decimum septimum diem instantis mensis Martii hora nona ante meridiem ejusdem diei apud Le Townhall præd. in Hereford præd. de audiend. inde iudicio suo eo quod præfat. Justitarii ad Assisas hic inde nondum, &c.

*The other De-
fendant pleads
nul Tort
nul Disseisin.*

Et præd. Willielmus Dobson per præd. Henricum Jones Attorn. suum dicit quod ipse nullam injuriam sive disseisinam præfat. Gilberto Hearne de tenemento præd. cum pertinen. fecit Et de hoc ponit se super Assisam

Affisam & præd. Gilbertus inde similiter, &c. Ideo capiatur inde inter eos Affisa, &c. Ac superinde Affisa præd. per Justitios dicti Dom. Regis ad Affisas præd. adjornatur usque ad prædict. diem Martis decimum septimum diem instantis mensis Martii præd. hora nona ante meridiem ejusdem diei apud Le Town-hall præd. in Hereford præd. idem dies & hora dat. sunt tam præfato Gilberto quam præd. Willielmo ibidem, &c. ad quem diem & horam coram dict. Justitiariis dicti Domini Regis apud Le Town-hall præd. venit tam præd. Gilbertus in propria persona sua quam præd. Griffith & Willielmus per Attorn. suum præd. super quo narration. illa ac materia in eadem content. per Curiam hic visis auditis & intellectis videtur Curiae hic quod narratio illa satis valida & sufficiens est in lege ad Affisam præd. manutenend Ideo considerat. est per præd. Justitios ad Affisas hic quod inter ipsum Gilbertum & præd. Griffith de libero tenemento præd. in querela Affisæ præd. specificat. cum pertinen. capiatur Affisa, super quo Affisa præd. per præd. Justitiar. Domini Regis ad Affisas hic ulterius adjornatur usque diem Mercurii decimum octavum ejusdem mensis Martii hora octava ante meridiem ejusdem diei apud Le Town-hall præd. in Hereford præd. iidem dies & hora dat. sunt partibus præd. ibidem, &c. Ad quos quidem diem & horam coram præfat. Justitiariis Domini Regis ad Affisas apud Le Town-hall præd. in Hereford præd. venerunt tam præd. Gilbertus in propria persona sua quam præd. Willielmus & Griffith per Attorn. suum præd. Et recognitor. Affisæ præd. exact. venerunt qui ad veritatem de præmissis dicend. elect. triat. & jurati dicunt super Sacramentum suum quod præd. Gilbertus Hearne seisit. fuit de præd. Officio Registr. sive Registrarius Episcopi Hereford & Successorum suorum Episcoporum Hereford in & per totam Dioecesin & Jurisdiction. Hereford & scribæ sive scribatus quorumcunq; Actorum judicial. & extrajudicial. processuum causarum litium instantiarum promotionum & negotiorum cujuscunq; sunt generis naturæ seu qualitatis ex Officio mero motu vel promoto & ad alicujus partis instantiam tam in Curia Consistorii Episcopalis Hereford quam alibi infra dict. Dioecesin & jurisdictionem Hereford coram Episcopo Hereford & Successoribus suis

Episcopis Hereford suove aut Successorum suorum Vicario in Spiritualibus generali ac etiam coram Official. principal. ac præsiden. Consistorii præd. aut Commissar. general. Episcopi Hereford & Successorum suorum eorumq; cujuslibet seu utriusque Deputato five Deputatis Substituto five Substitutis vel Surrogato five Surrogatis quoque modo authoritate Episcopi Hereford & Successorum suorum Episcoporum Hereford ordinar. agitat. mot. & tractat. five agend. movend. & tractand. ac etiam custodiam omnium & singulorum Registorum Archivorum Actorum Librorum Instrumentorum Scriptorum aliorumque exhibitorum aut exhibend. Episcopi Hereford ac Predecessorum & Successorum suorum Episcoporum Hereford quorumcunque ad dict. Officia spectan. tangend. seu concernen. cum pertinen. & in Visu posit. & in querela præd. superius mentionat. ut de libero tenemento pro termino Vitæ suæ quousq; præd. Griffith Reynolds & Willielmus Dobson ipsum Gilbertum inde injuste & sine judicio sed non vi & armis disseisiver. prout præd. Gilbertus superius versus eos queritur Et assid. damna ipsius Gilberti occasione Disseisin. præd. ultra misas & Custagia sua, &c. in hac parte apposita ad trescent. libras & pro misis & Custagiis illis ad quadraginta solidos Et quia præfat. Justitiar. Domini Regis ad Assisas de judicio suo de & super præmissis reddend. nondum advisantur dies inde dat. est partibus præd. coram præfat. Justitiar. ad Assisas usque ad horam septimam post meridiem ejusdem diei apud Cameram dict. Justitiar. ad domum mansional. Pauli Williams Gen. in Hereford præd. in Com. præd. de audiend. inde judicio suo eo quod præfat. Justitiar. ad Assisas hic inde nondum, &c. Ad quam septimam horam post meridiem ejusdem diei apud præd. Cameram præd. Justitiar. in præd. domo præfat. Pauli Williams in Hereford præd. coram præfat. Justitiar. ad Assisas venerunt tam præd. Gilbertus Hearne in propria persona sua quam præd. Willielmus & Griffith per Attorn. suos præd. super quo visis per præd. Justitarios ad Assisas præmissis matureque deliberation. inde habit. considerat. est per præd. Justitiar. dicti Domini Regis ad Assisas hic quod præd. Gilbertus recuperet seisinam suam versus præd. Griffith Reynolds & Willielmum Dobson de Officiis præd. cum pertinen.

pertinen. per Visum Recognitor. Assisæ prædict. & damna sua præd. ad trescentas & duas libras per recogn. præd. in forma præd. assess. necnon octo libras eidem Gilberto Hearne ad requisitionem suam pro misis & Custagiis suis præd. per Cur. hic de incremento adjudicat. quæ quidem damna in toto se attingunt ad trescentas & decem libras & præd. Griffith Reynolds & Willielmus Dobson in misericordia, &c. Et super hoc præd. Gilbertus Hearne petit breve dicti Domini Regis Vic. Com. Hereford præd. dirigend. de habere faciend. ei plenar. seisinam de Offic. præd. cum pertinentiis per Visum Recognitorum Assisæ præd. recuperat. & ei conceditur, &c.

Judicium sign. octodecimo die
Martii 8 Willielmi tertii.

The Writ of Seisin you may see before, Page 29.

This was an Assise of Novel Disseisin brought against two Defendants for disseising the Plaintiff of the Offices of the Register to the Bishop of Hereford, and Aduary in his Consistory Court, setting forth for his Title that the same are ancient Offices in the Diocels, and within the Jurisdiction of that Bishop at Hereford aforesaid, and always granted by him under the Episcopal Seal to any Person qualified for the same; then he sets forth that Gilbert, Bishop of Hereford, by a certain Writing, bearing Date the 25th Day of September, in the Year 1694, and sealed with his Episcopal Seal, did grant the said Offices (which were then void) unto the Plaintiff, and that he was qualified to execute the same, to hold and enjoy those Offices, together with all Fees, Profits and Perquisites thereof, for and during his Natural Life, and to execute them by himself, or a sufficient Deputy, during his Life as aforesaid, in as full and ample Manner as any former Register held and enjoyed the same, as in and by the said Grant, Relation being thereunto had, it doth and may more plainly appear; by Vertue whereof he was seised of a Freehold in the said Offices, with all the Perquisites thereunto belonging, until he was disseised by the Defendants, &c.

The

Imparlances.

The Defendants came Dyer of the Writ and Declaration, and have Leade to imparle till Monday the 16th Day of March, at eleven a-clock in the Forenoon of the same Day at the Town-hall in Hereford; and then they appeared and imparled to three of the Clock in the Afternoon of that Day at the Town-hall aforesaid: And both of them appearing at that Time and Place, one demurred to the Declaration, and the Plaintiff immediately joined in Demurrer; and the Court took Time to give Judgment on the Demurrer till the next Day, viz. till Tuesday the 17th Day of March; and the other Defendant pleaded an issuable Plea, viz. Nul Tort nul Disseisin; upon which the Plaintiff took Issue, &c.

Afterwards upon Tuesday the 17th Day of March, the Judges gave Judgment on the Demurrer, viz. Quod capiatur Assisa, and thereupon the Assise was adjourned to the next Day, viz. to Wednesday the 18th Day of March, at eight of the Clock in the Forenoon aforesaid; and the Cause being then tried, the Recognitors found for the Plaintiff, viz. That he was seised of the said Offices for his Life until the Defendants disseised him, but not with force; and they assessed his Damages to three hundred Pounds, and Costs to 40 s. and thereupon the Cause was adjourned to the Judges Chamber in Hereford aforesaid, at seven of the Clock in the Afternoon of the same Day; and all Parties, &c. appearing there, the Judges gave Judgment that the Plaintiff should recover Seisin, &c. and his Damages to three hundred and two Pounds, and eight Pounds Costs more de incremento, and a Writ of Seisin was awarded to the Sheriff, to give the Plaintiff Seisin of the Office with the Appurtenances, &c.

The Judgment was signed on that very Day, being the 18th Day of March; and the Plaintiff had then a Writ of Seisin accordingly.

This is a very compleat Record in an Assise of Novel Disseisin, and the Pleadings seem to be drawn with some

some Art to prolong the Time; for after the Defendants had appeared, and twice imparled, one of them demurred to the Declaration, and the other pleaded the General Issue: And here the Reader may observe one Reason why an Affise is called Festinum remedium; for tho' there were two Imparlances, yet they were not from one Term to another, as in other Actions, but from one Hour to another, and that in the same Day; and notwithstanding one of the Defendants demurred on the very last Hour, yet Judgment was given upon that Demurrer the next Day; and the Cause was then tried, and the Jury giving a Verdict for the Plaintiff, the Judges gave Judgment at their Chamber the Day following, and a Writ of Seisin was awarded; so that all this was done at one Affises, and in the Compass of three Days, whereas in other Actions the like is not often done in six Months, and sometimes not in one Year.

Therefore if the Reason formerly given by the Judges did not prevail, which was, That an Action on the Case should not lie where-ever there was a proper Writ in the Register to recover the Thing in Demand, one would think that an Affise should always lie where any Man is disseised of a Freehold, whether of Lands, Rent, Offices, or of what Nature soever it be; because there is not only a proper Writ in the Register in such Cases, but Right will sooner be obtained in an Affise of Novel Disseisin, and that in a judicial, tho' almost in a Summary Way, than in any other Actions, where Imparlances are allowed according to the usual Course of Proceedings from one Term to another; where General Demurrers are depending a whole Term, and Special Demurrers longer, before Judgment is given; and where, tho' the Plaintiff gets a Verdict at the Affises, he cannot have Judgment before four Days within the following Term.

These Things are generally known by every Practiser; and what Delays and Inconveniencies frequently happen by the Death of either Party, either pending
T the

the Assise, or before the last Continuance, or between the Day of the Nisi prius and Day in Bank, or before the Judgment; whereas in an Assise against two or more Defendants, the Death of one of them shall not abate the Writ as long as there is one surviving, because each of them is a Tenant to the Freehold; so that it may be expedient for these and many more Reasons that this Assise should be revived.

Stanian versus Brigstock.

Civit. Glouc. ff. **A**SSISA ven. recognitur. si Willelmus Brigstock Ar. injuste, &c. disseisivit Abraham Stanian de libero tenimento suo in Civitate Gloucester infra triginta Annos, &c. Et inde idem Abrahamus in propria persona sua queritur quod præd. Willimus disseisivit eum de Officiis principalis Registrarii five Registrariatus Episcopi Gloucester & Successorum suorum Episcoporum Gloucester in & per totam Civitatem Dioecesin & jurisdiction. Episcopi Gloucester ac etiam Actorum scribæ causarum & negotiorum consistorii Episcopalis Gloucester custodiarq; Registri & Registorum Episcopi Gloucester & Successorum suorum præd. necnon omnium & singulorum Librorum Minimentorum Scriptorum Testamentorum & Exhibitionum quorumcunq; ad eadem Officia spectant. & pertinent. Et pro titulo liberi tenementi de Officiis præd. cum pertinent. & Assisam præd. habend. idem Abrahamus dicit quod præd. Officia sunt antiqua Officia infra Civitat. Dioecesin & Jurisdiction. Episcopi Gloucester videlicet apud Civitatem Gloucester in Comitatu ejusdem Civitatis ac concessa & concessibilia cuicunq; personæ idoneæ & sufficien. pro termino vitæ suæ per Episcopos Gloucester sub Sigillo suo Episcopali Quodq; Robertus Episcopus Gloucester per quoddam Scriptum suum geren. dat. vicesimo die Novembris Anno Domini millesimo sexcentesimo octogesimo nono sub Sigillo Episcopali suo sigillat. apud Civitat. Gloucester in Comitatu ejusdem Civitatis pro se & Successoribus suis

suis Episcopis Gloucester dedit & concessit præfat. Abrahamo Stanian adtunc existen. persona idonea & sufficient. ad præd. Officia tenend. & exequend. tota duo Officia videlt. Officium principalis Registrar. sive Registrariat. præd. Episc. Gloucester & Successorum suorum Episcoporum Gloucester præd. in & per totam Civitatem Diocesin & Jurisdictionem Episcopi Gloucester Ac etiam Actorum scribæ causarum & negotiorum consistorii Episcopalis sui Gloucester custodiamq; Registri & Registeriorum ejusdem Episcopi & Successorum suorum præd. necnon omnium & singulorum Librorum Minimentorum Scriptorum Testamentorum & Exhibitionum quorumcunque ad eadem Officia spectan. & pertinent una cum omnibus & singulis Vadiis feodis proficuis commoditatibus & Emolumentis eisdem Officiis spectantibus ac in futuro contingen. & spectan. in tam amplis modo & forma prout Henricus Jones vel Owen Brigstock tunc nuper Registrar. Diocef. Gloucester præd. vel aliquis al. Registrar. Diocef. Gloucester ante tempus illud illa perceperunt & habuerunt vel eorum aliquis percepit aut habuit Habend. & tenend. gaudend. & postuland. tota illa duo Officia præd. Registrarii principalis & Actorum scribæ una cum custodia Librorum minimentorum Scriptorum Testamentorum & omnium Exhibitorum quorumcunque præfat. Abraham Stanian durante termino ejus Vitæ naturalis exercen. per se vel per sufficient. Deputat. suum vel Deputatos suos sufficientes una cum omnibus & singulis Vadiis feodis proficuis commoditat. præd. Officiis spectantibus & consuetis in tam amplis modo & forma prout præd. Henricus Jones vel Owenus Brigstock vel aliquis alius Registrarius Dioceſis Gloucester pro exercitio vel occupatione dict. Offic. ante tempus confection. concessionis præd. perceperunt & habuerunt per se vel Deputat. suos vel percepit aut habuit aliquis eorum prout per Scriptum præd. hic in Curia prolat. plenius apparet præd. duobus Officiis tempore confection. Concessionis præd. vacuis existentibus videlt. apud Civitatem Gloucester præd. in Comitatu ejusdem Civitatis Idemq; Abrahamus ulterius dicit quod postea scilt. decimo tertio die Januarii tunc prox. sequen. Gulielmus Jane Sacræ Theologiæ Professor adtunc Decanus Ecclesiæ Cathedralis sanctæ & individuæ Trinitatis Gloucester & ejusdem Ecclesiæ Capitul.

Capitul. per quoddam Scriptum suum geren. dat. in Domino Capitulari sua præd. decimo tertio die Januarii Anno Domini millesimo sexcentesimo octogesimo nono ac Sigillo communi suo sigillat. concessionem præd. pro se & Successoribus suis ratificaverunt & confirmaverunt videlt. apud Civitat. Gloucester præd. in Com. ejusdem Civitatis prout per præd. ult. mentionat. Scriptum Confirmationis hic in Curia prolat. plenius liquet & apparet quorum prætextu idem Abrahamus Stanian à præd. vicesimo die Novembris Anno Domini 1689, supradict. & continue postea usque primum diem Septembris Anno Domini 1694, apud Civitat. Gloucester præd. in Com. ejusdem Civitatis præd. Officia principalis Registrar. sive Registrariatus præd. Episcopi Gloucester & Successorum suorum Episcoporum Gloucester præd. in & per totam Civitatem Dioces. & Jurisdictionem Episcopi Gloucester ac etiam Actorum scribæ causarum & negotiorum consistor. Episcopalis Gloucester custodiamq; Registri & Registorum præd. Episcopi Gloucester & Successorum suorum præd. necnon omnium & singulorum Librorum Minimentorum Scriptorum Testamentorum & Exhibitionum quorumcunq; ad eadem Officia spectan. & pertinen. una cum omnibus & singulis Vadiis feodis proficuis commoditatibus & emolumentis eisdem Officiis spectantibus habuit tenuit exercuit & gavisus fuit occupavit & fuit inde seisit. in Dominico suo ut de libero tenemento pro termino Vitæ suæ quousq; præd. Willielmus Brigstock ipsum Abraham de Officiis illis injuste & sine judicio disseisivit videlt. apud Civitat. Gloucester præd. in Comitatu ejusdem Civitatis Et inde petit Assisam, &c.

Stanian versus Brigstock.

THAT I WAS likewise an Affise of Model Disseisin brought against the Defendant for disseising the Plaintiff of the Offices of Register to the Bishop of Gloucester, and of actuary in his Consistory Court, setting forth for his Title, That the said Offices are very ancient Offices within the Diocese of Gloucester aforesaid, and always granted by the Bishops of the said See, under their Episcopal Seal, for Life, to any Person qualified for the same; and that Robert, Bishop of Gloucester, by a certain Writing, bearing Date the 20th Day of November, in the Year 1689, and sealed with his Episcopal Seal, did grant the said Offices to the Plaintiff, being then a fit Person to execute the same, together with all Fees, Profits and Perquisites thereunto belonging, in as full and ample Manner as Henry Jones, Owen Brigstock, or any other Register, formerly held and enjoyed the same. To have and to hold the said Offices, for and during the Term of his Natural Life, and the same to execute either by himself, or by his Deputy, during that Time, as in and by the said Writing now produced to the Court, it both and may more plainly appear; the said Offices being then void: And the Plaintiff further sets forth, That the Dean and Chapter of Gloucester by another Writing, bearing Date on the 13th Day of January 1689, and sealed with their Common Seal, did for themselves and their Successors ratify and confirm the said Grant, &c. as in and by the said Writing of Confirmation likewise produced into Court may appear; by Vertue whereof the Plaintiff held and enjoyed the said Offices with the Fees and Perquisites thereof from the said 20th Day of November 1689, to the first Day of September 1694, and was seised thereof for his Life until the Defendant disseised him, &c.

I find no further Proceeding in this Assise ; but there is a material Difference in the Pleadings between this Case and that immediately preceding : For tho' they both concerned the Office of a Register to a Bishop, and both were alledged to be Antiqua Officia ; yet this was pleaded with a Confirmation of the Dean and Chapter, which the other was not ; and if that Resolution in the 10th Report in the Bishop of Salisbury's Case is Law, viz. That the Grant of an ancient Office by a Bishop since the Statute of 1 Eliz. and not confirmed by the Dean and Chapter, is void, against the Successor, then in this Precedent the Plaintiff hath set forth a better Title to the Office of a Register than was done in the former, because this is most agreeable to the Law.

AN ASSISE

FOR THE

OFFICE

OF

Clerk of the Peace.

Owen versus Sanders.

J. L. 1. L. Raym. 159.

Memorandum quod Edwardus Ward miles Capital. Bar. Scaccarii Domini Regis in Crastino Purificationis Beatæ Mariæ isto eodem termino per manus suas proprias deliberavit Justitiariis hic recordum & processum cujusdam Assisæ novæ disseisinæ coram eo & Eldred. Lancel. Lee adtunc associat. eidem Edwardo Ward & Willielmo Gregory mil. uno Justitiar. dicti Domini Regis ad placita coram ipso Rege tenend. assign. Justitiar. ipsius Domini Regis ad Assisas in Comitatu Kanc. capiend. assign. per formam Statuti, &c. præsentia præfat. Willielmi Gregory non expectat. Virtute Brevis dicti Domini Regis de Si non omnes, &c. nuper capt. cum omnibus ea tangentibus in hæc verba.

Placita

Placita Assisæ apud Maidstone in Com. Kanciz coram Edwardo Ward milite Capital. Barone Scaccarii Domini Regis Eldred. Lanceloto Lee hac vice associat. eidem Edwardo Ward & Willielmo Gregory mil. uno Justitiar. dicti Domini Regis ad placita coram ipso Rege tenend. assign. Justitiar. ipsius Domini Regis ad Assisas in Comitatu Kanc. præd. capiend. assign. per formam Statuti, &c. præsentia præfat. Willielmi Gregory non expectata Virtute brevis dicti Domini Regis de Si non omnes, &c. die Martis vicesimo tertio die Julii Anno Regni Dom. nost. Williel. tertii nunc Reg. Angliæ, &c. sept.

Kanc. §. Assisa venit recognitur. si Robertus Saunders Gen. injuste, &c. disseisivit Philippum Owen Armigerum de libero tenemento suo in Maidstone infra triginta Annos, &c. Et unde idem Philippus in propria persona sua queritur quod præd. Robertus disseisivit ipsum de Officio Clerici pacis in & pro prædict. Comitatu Kanciz Et pro titulo liberi tenementi de Officio prædicto cum pertin. & Assisam præd. habend. idem Philippus dicit quod Officium illud est antiquum Officium in Comitatu præd. videlt. apud Maidstone præd. Quodq; per quendam actum in Parlamento Domini Regis nunc & Domine Mariæ nuper Regine Angliæ apud Westm. in Com. Midd. tertio decimo die Februar. Anno Regni sui primo tent. edit. intitulat. *An Act to enable Lords Commissioners for the Great Seal to execute the Office of Lord Chancellor or Lord Keeper*, inter alia enactat. fuit autoritate ejusdem Parliamenti quod Custodes Rotulorum vel alia persona cui de jure pertinere debuit sive deberet nominare vel appunctuare Clericum pacis pro aliquo Comitatu Circuitu Anglice Riding divisione vel alio loco a tempore in tempus ubi Officium Clerici pacis tunc fuit sive extunc postea vacatum foret nominaret & appunctuaret unam idoneam personam & sufficientem residentem in dicto Comitatu Circuitu Anglice Riding divisione vel alio loco pro qua sic appunctuat. fuit sive foret appunctuat. Clericum pacis ad exequend. idem per seipsum vel sufficien. deputatum suum & capere & recipere feoda proficua & perquisitiones ejusdem pro tam longo tempore tantum quam talis Clericus pacis bene se gereret in dicto suo Officio Et ulterius enactat. existit autoritate præd. quod quilibet Clericus pacis

antequam

antequam intraret super executionem dicti sui Officii in aperta Sessione præstaret sacrament. in eodem actu mentionat. sequen. videlt. *I A. B. do swear that I have not, nor will pay any Sum or Sums of Money, or other Reward whatsoever, nor given any Bond or other Assurance to pay any Money, Fee or Profit, directly or indirectly, to any Person or Persons whomsoever for such Nomination or Appointment: So help me God.* Prout per eundem actum plenius apparet. Quodq; tempore Editionis actus præd. & diu antea & continue extunc hucusq; postea nominatio & appunctuatio Clerici pacis dicti Comitatus Kanc. ad quamlibet Vacation. inde ad custodem Rotulorum pro dicto Comitatu Kanc. pro tempore existen. de jure spectabat & pertinuit Quodq; post editionem actus præd. scilt. decimo quinto die Julii Anno primo supradicto apud Maidstone præd. Henneagius Comes Winchelsea tunc Custos Rotulorum pro Comitatu Kantiæ præd. nominavit & appunctuavit ipsum Philippum ad Officium Clerici pacis pro Comitatu præd. adtunc vacan. existen. ipso dicto Philippo adtunc existen. persona in legibus perita & idonea & sufficien. ad Officium illud exequend. & adtunc & adhuc residen. in Comitatu præd. videlt. apud Maidstone præd. Quodq; idem Philippus antequam ipse intravit super execution. Officii præd. scilt. in aperta Sessione quarterial. pacis in & pro Com. præd. Kantiæ tent. Die & Anno ult. præd. præstitit præd. sacrament. mentionat. & content. in præd. Statuto videlt. apud Maidstone præd. & in Officium illud adtunc & ibidem admissus fuit per quod idem Philippus debito modo devenit Clericus pacis Comitatus Kantiæ præd. ac Officium illud cum Vadiis & feodis adinde pertinen. habuit tenuit exercuit occupavit & gavisus fuit ac seipsum in eodem Officio suo bene gessit & inde fuit seisit. in dominico suo ut de libero tenemento pro termino Vitæ suæ quousq; præd. Robertus Saunders ipsum Philippum de Officio illo injuste & sine judicio disseisivit videlt. apud Maidstone præd. Et inde petit Assisam, &c.

Et prædictus Robertus Saunders in propria persona sua ven. & defend. vim & injuriam quando, &c. & quicquid, &c. Et dicit quod præd. Philippus nunquam

*The Plea Nun-
quam Seisi-
tus, &c.*

fuit seifitus de Officio præd. de tali Statu unde potuit disseifiri Et si, &c. tunc idem Robertus dicit quod ipse nullam injuriam five disseifinam eidem Philippo fecit de Officio præd. Et de hoc ponit se super Assisam & præd. Philippus similiter, &c. Ideo capiatur inter eos Assisa, &c.

*Special Ver-
dict.*

Et Recognitores Assisæ præd. exact. venerunt qui ad veritatem de præmissis dicend. elect. triat. & jurat. dicunt super sacrament. suum quod ante præd. tempus quo injuria & disseifina præd. superius fieri supponuntur per præd. Actum Parliamenti in Assisa præd. superius mentionat. in præd. Parlamento dicti Domini Regis nunc & Dominae Mariæ nuper Reginae Angliæ apud Westm. præd. in dicto Comitatu Midd. præd. tertio decimo die Februar. Anno Regni sui primo supradicto tent. edit. intitulat. An Act for enabling Lords Commissioners for the Great Seal to execute the Office of Lord Chancellor or Lord Keeper (inter alia) enactat fuit autoritate ejusdem Parliamenti prout sequitur in hæc verba sequen. And be it enacted by the Authority aforesaid, That the nominating and appointing of the Custos Rotulorum throughout all the Shires and Counties of this Realm is and shall be as directed by a Statute made in the 37th Year of Hen. 8. intituled a Bill for Custos Rotulorum, and the Clerk of the Peace, any Law, Usage, or Statute to the contrary in any wise notwithstanding: And be it further enacted by the Authority aforesaid, That the Custos Rotulorum, or other Person to whom of Right it doth or shall belong to nominate or appoint the Clerk of the Peace for any County, Riding or Division, or other Place, shall from Time to Time, where the Office of the Clerk of the Peace now is, or hereafter shall be void, nominate and appoint one able and sufficient Person residing in the said County, Riding, Division, or other Place, for which he is so appointed, or to be appointed Clerk of the Peace, to execute the same by himself, or by his sufficient Deputy, and to take and receive the fees, Profits and Perquisites thereof for so long Time only as such Clerk of the Peace shall well demean himself in the said Office. And be it enacted by the Authority aforesaid, That if any

any Clerk of the Peace already nominated, or to be nominated as aforesaid, shall misbehave himself in the Execution of the said Office, and thereupon a Complaint or Charge in Writing of such Misbehaviour, shall be exhibited against him to the Justices of the Peace in their General Quarter-Sessions, it shall be lawful for the said Justices, or the major Part of them, from Time to Time, upon Examination and due Proof thereof, openly in their said General Quarter-Sessions to suspend or discharge him from the said Office, and that in such Case the Custos Rotulorum, or other Person to whom of Right it doth belong to nominate and appoint the Clerk of the Peace of such County, Riding, Division, or Place, shall nominate and appoint one other able and sufficient Person residing in the said County, Riding, Division, or Place, as aforesaid, Clerk of the Peace in the Place of such Person so removed as aforesaid, and in Case of Refusal or Neglect to make such Nomination and Appointment before the next General Quarter-Sessions, to be holden after the said Refusal, that it shall and may be lawful for the said Justices of the Peace at their General Quarter-Sessions for the said County, Riding, Division or Place, or the major Part of them, to nominate and appoint one able and sufficient Person residing in the said County, Riding, Division, or Place, to be Clerk of the Peace in the Place of such Person so removed as aforesaid, to have, hold, and enjoy the said Office of Clerk of the Peace, and to execute the same by himself, or by his sufficient Deputy, and to receive the Fees, Profits and Perquisites thereof. Provided always, and be it enacted by the Authority aforesaid, That he shall be liable and subject to all the Penalties, Forfeitures, Conditions, Limitations and Provisions herein and hereby mentioned and expressed, and may be removed and discharged by the said Justices, or the major Part of them, in such Manner and Ways as is above specified; And be it further enacted by the Authority aforesaid, That it shall not be lawful for any Custos Rotulorum, or other Person, to whom of Right it doth or shall belong to nominate, elect and appoint any Clerk of the Peace, to sell the said place of Clerk of the

the Peace, or to take any Bond, or other Assurance, to receive or have any Reward, Money, Fee or Profit, directly or indirectly, to him or any other Person, for such nominating, electing or appointing, but that every such Custos Rotulorum, or other Person that shall so sell the Clerkship of the Peace, and every Clerk of the Peace who shall so buy his Place, are hereby disabled to hold their Places of Custos Rotulorum, or Clerkship of the Peace, and shall also each of them respectively forfeit double the Sum or Value of any Thing that shall be so given or taken, to be recovered by him or them to their own Use, that shall sue for the same, to be prosecuted by any Action of Debt, Suit, Bill, Complaint or Information in any of His Majesty's Courts at Westminster, wherein no Essoin, Protection or Wager of Law shall lie. And be it further enacted by the Authority aforesaid, That every Clerk of the Peace, before he enter upon the Execution of his said Office, shall in open Sessions take the Oath following :

I A. B. do swear that I have not, nor will pay any Sum or Sums of Money, or other Reward whatsoever, nor given any Bond, or other Assurance, to pay any Money, Fee or Profit, directly or indirectly, to any Person or Persons whomsoever, for such Nomination or Appointment : So help me God.

This Act to commence from the first Day of May 1689, prout per Actum præd. (inter alia) plenius liquet & apparet Et Recognitores præd. ulterius dicunt super sacrament. suum præd. quod postea & antea præd. tempus quo, &c. scilicet duodecimo die Julii Anno primo supradicto præd. Dominus Rex nunc & Domina nuper Regina per literas suas patentes sub magno Sigillo suo Angliæ confect. geren. dat. apud Westm. præd. eisdem die & Anno assignaverunt & nominaverunt prædilectum & perquam fidelem Consiliarium suum Henneage Comitatem Winchelsea Custodem Rotulorum pacis ipsorum Domini Regis & Dominae nuper Reginae in Com. Cantuariæ præd. Et Recognit. præd. super sacrament. suum præd. ulterius dicunt quod prædict. Comite Custode Rotulorum pacis ipsorum Regis & Reginae dicti Comitatus. Kano.

virtute

virtute assignationis & nominationis prædictæ existens. ipsa
 prædict. Henneage Comes Winchelsea per nomen Henneage
 Comitis Winchelsea Custodis Rotulorum in Comitatu
 Kanc. cui de jure pertinet nominare Clericum pa-
 cis pro Comitatu prædicto. postea & ante tempus quo, &c.
 scilicet prædicto duodecimo die Julii Anno primo supra-
 dicto per quoddam scriptum suum Sigillo suo sigillat.
 & eidem Philippo deliberatum geren. dat. eisdem Die &
 Anno (Officio Clerici pacis dicti Comitatus Kanc. tunc
 vacante existens.) appunctuavit & nominavit prædict. Phi-
 lippum Owen per nomen Philippi Owen de interiori
 Templo London. Ar. fore Clericum pacis dicti Comita-
 tus Kanc. habend. exercend. & gaudend. prædict. Officium
 prædict. Philippo Owen per se vel sufficien. Deputat. sive
 Deputatos suos cum omnibus feodis potestatibus Privi-
 legiis & Advantagiis adinde spectant. *durante beneplacito*
 dicti Henneage Comitis Winchelsea tenor ejus qui-
 dem scripti sequitur in his verbis & figuris sequen. *To*
all to whom these presents shall come, Henneage,
 Earl of Winchelsea, Custos Rotulorum in the Coun-
 ty of Kent, sendeth greeting: Know ye, That the said
 Henneage, Earl of Winchelsea, for divers good Cau-
 ses and Considerations him thereunto moving, hath
 nominated, deputed and appointed, and by these Pre-
 sents doth nominate depute and appoint Philip Owen,
 of the Inner Temple London, Esq; to be Clerk of the
 Peace of the said County of Kent, to hold, exercise
 and enjoy the said Office of Clerk of the Peace to the
 said Philip Owen, by himself or his sufficient Deputy or
 Deputies, with all Fees, Powers, Privileges and Ad-
 vantages thereunto belonging, during the Pleasure of
 the said Henneage, Earl of Winchelsea, in as full
 and ample Manner as any Clerk of the Peace of the
 said County formerly held and enjoyed the said Office
 and Premises; and the said Earl doth hereby direct
 Robert Saunders and John Kennet, and all others whom
 it may concern, forthwith, upon Sight hereof, to deli-
 ver up unto the said Philip Owen all Records, Writs,
 Precepts, Process and Indiments whatsoever, taken
 by or depending before the Justices of Peace of the
 said County, and the Receipt of the said Philip Owen
 shall

shall be a sufficient Discharge in that Behalf. In Wit-
ness whereof the said Earl hath hereunto set his hand
and Seal the 12th Day of July, in the first Year of
the Reign of our Sovereign Lord and Lady William
and Mary, by the Grace of God of England, Scotland,
France and Ireland, King and Queen, Defenders of the
Faith, &c. Annoq; Domini 1689, Winchelsea. Prout
per scriptum præd. præfat. Justitiar. & recognitoribus
præd. modo hic ostens. probat. lect. & in Evidenc. dat. li-
quet & apparet Et Recognitores præd. ulterius dicunt
super sacrament. suum præd. quod ad general. quarterial.
Session. pacis dictorum Domini Regis & Dominae nuper
Reginae Comitatus Kanc. præd. tent. apud Maidstone in
& pro Comitatu præd. die Lunæ decimo quarto die
præd. mensis Julii Anno primo supradicto coram Vere
Fanc. mil. Balnei Stephano Leonard Bar. Johanne Bug-
gin Ar. & aliis sociis suis Justitiar. dicti Domini Regis &
Dominae nuper Reginae ad pacem in Comitatu præd. con-
servand. necnon ad diversas felonias transgressiones &
alia malefacta in Com. præd. perpetrat. audiend. & ter-
minand. assign. præd. scriptum præfat. Comitatus Win-
chelsea præfat. Philippo Owen ut præfertur confectum
esse Clerico pacis Comitatus præd. Justitiariis præd. ibi-
dem assemblat. in dicta generali quarteriali Session. pacis
Comitatus præd. ostensum & lectum fuit quodq; quæ-
stio adtunc oriebatur inter Justitiar. pacis præd. de & con-
cernen. validitate præd. scripti præfat. Comitatus Win-
chelsea præd. Philippo Owen ut præfertur confect. pro
constitutione præd. Philippi Owen Clerici pacis Comi-
tat. Kanciae præd. ac quod præd. Justitiani ad pacem
adtunc & ibidem ut præfertur assemblat. in generali &
quarteriali Sessione pacis Comitatus præd. tent. apud
Maidstone præd. in eodem Comitatu præfat. Philip-
pum Owen in Officium Clerici pacis Comitatus præd.
adtunc & ibidem admittere recusaverunt licet iidem Ju-
stitiarii pacis ad eundem Philippum Owen in Officium
illud admittere & eum adtunc & ibidem requisit. fuissent
Et Recognitores præd. ulterius dicunt super sacrament.
suum præd. quod postea & ante præd. tempus quo, &c.
scilt. ad dictam quarterial. general. Sessionem pacis
dictorum Domini Regis nunc & Dominae nuper Reginae
tent. per adjournament. apud Castrum Cantuar. in dicto
Comitatu

Comitatu Kanc. in & pro Comitatu Kanc. præd. vicesimo tertio die præd. mensis Julii Anno primo supradicto coram Vincentio Denn serviente ad legem & Thoma Turner Ar. & aliis sociis suis Justitiar. dict. Domini Regis nunc & dict. Dominae nuper Reginae ad pacem in Com. Kanc. præd. conservand. necnon ad diversas felonias transgressionem & alia malefacta in Comitatu præd. perpetrata. audiend. & terminand. assign. venit præd. Comes Winchelsea tunc Custode Rotulorum pro dicto Comitatu Kanc. existente cui de jure ut præfertur pertinuit nominare Clericum pacis pro Comitatu præd. super quamlibet vacationem Officii illius in propria persona sua in aperta Curia ejusdem generalis quarterialis Sessionis pacis præd. tent. per adjournamentum præd. apud Castrum Cantuar. præd. in & pro Com. præd. die & Anno ult. præd. Quodq; scriptum præd. superius specificat. per ordinem præd. Comitis Winchelsea in aperta Curia ejusdem generalis quarterialis Sessionis pacis præd. tent. per adjournamentum præd. apud Castrum Cantuar. præd. in & pro Comitatu præd. ut præfertur palam & publice adtunc & ibidem lectum fuit Et Recognitores præd. ulterius dicunt super sacrament. suum præd. quod præd. Comes Winchelsea existen. ut præfertur Custos Rotulorum pro dicto Comitatu Kanc. cui de jure pertinuit ut præfertur nominare Clericum pacis pro Comitatu præd. tunc in eadem aperta Curia generalis Sessionis quarterialis pacis præd. tent. per adjournamentum præd. apud Castrum Cantuar. præd. in & pro Comitatu præd. dicto vicesimo tertio die præd. mensis Julii Anno primo supradicto absq; relatione Anglice *Reference* ad scriptum præd. viva voce sine scripto dixit & declaravit hæc verba Anglicana sequen. *I do appoint and nominate the said Philip Owen to be Clerk of the Peace, according to the Act of Parliament; prædictoque Philippo adtunc persona in legibus perita & idonea & sufficiente ad Officium illud exequend. & adtunc & adhuc residen. in Comitatu præd. videlicet apud Maidstone præd. Et recognitores præd. ulterius dicunt super sacramentum suum præd. quod superinde postea & ante præd. tempus quo, &c. scilicet ad eandem generalem quarterial. Sessionem pacis dictorum Domini Regis & Dominae nuper Reginae tent. per adjournament. præd. apud Castrum Cantuar.*

Cantuar. præd. in & pro Comitatu Kanc. præd. dicto vice-
 cesimo tertio die Julii Anno primo supradicto coram
 præfatis Justitiariis ad pacem ultimo supranominatis &
 aliis sociis suis præd. prædictus Philippus Owen admis-
 sus fuit Clericus pacis Comitatus præd. Quodq; postea
 & ante præd. tempus quo, &c. scilicet, prædicto vice-
 cesimo tertio die Julii Anno primo supradicto in eadem aperta
 Sessione pacis præd. ut præfertur tent. per adjournamen-
 tum præd. apud Castum Cantuar. præd. in & pro Co-
 mitatu Kanc. prædict. coram præfat. Justitiar. ultimo
 mentionat. & aliis sociis suis præd. & antequam præd.
 Philippus intravit super executionem præd. Officii Cle-
 rici pacis præd. ipse idem Philippus Owen præstitit sa-
 cramentum in ædib; præd. mentionat. per quemlibet
 Clericum pacis præstare. & superinde idem Philippus
 adfuit & ibidem executionem Officii Clerici pacis in &
 pro dicto Comitatu Kanc. super se suscepit & Officium
 illud cum Vadiis & feodis adinde pertinen. abinde usq;
 ad & super septimum diem Octob. tunc prox. sequen-
 tem habuit tenuit exercuit occupavit & gavisus fuit Et
 recognitor. præd. super sacramentum suum præd. ulterius
 dicunt quod præd. Comes Winchelsea postea & ante tem-
 pus quo, &c. scilicet, vice-
 cesimo quinto die Augusti Anno
 primo supradicto in Com. præd. obiit Et Recognitores
 præd. ulterius dicunt super sacrament. suum præd.
 quod postea & ante tempus præd. quo, &c. scilicet vice-
 cesimo sexto die Septembris Anno primo supradicto præd.
 Dominus Rex & Domina nuper Regina per literas suas pa-
 tentes sub magno Sigillo suo Angliæ confect. gerendi dat.
 apud Westm. eisdem Die & Anno ultimo mentionat. as-
 signaverunt & nominaver. per dilectum & fidelem con-
 sanguineum & consiliarium suum Henricum Vicecomitem
 Sydney custodem Rotulorum pacis dictorum Domini
 Regis & Domine nuper Regine infra Comitatum suum
 Kanc. præd. Et Recognitores præd. ulterius dicunt super
 sacrament. suum præd. quod præd. Henricus Vicecomes
 Sydney postea & ante præd. tempus quo, &c. scilicet vi-
 cesimo nono die præd. mensis Septembris Anno primo
 supradicto adfuit & ibidem existens Custos Rotulorum Comitatus
 Kanc. præd. fecit & rat. factum suum deliberavit quoddam
 scriptum suum Sigillo suo sigillat. per ipsum præfat. Hen-
 ricum Vicecomitem Sydney per nomen præ honorabilis
 Henrici

Henrici Vicecomitis Sydney & custod. Rotulorum
 Com. Kancie fact. Roberto Saunders juniori per no-
 men Roberti Saunders junioris de Maidstone in Co-
 mitatu Kant. Gen. genen. dat. dicto vicesimo nono
 die Septembris Anno primo supradicti tenor cujus-
 quidem scripti sequitur in his verbis & figuris sequen-
 tibus. To all Christian People to whom these Presents shall
 come, the Right Honourable Henry Viscount Syd-
 ney, and Custos Rotulorum in the County of Kent,
 sendeth greeting in our Lord God Everlasting: Know-
 ye, That I the said Henry Viscount Sydney have gi-
 ven and granted, and by these Presents do give and
 grant unto Robert Saunders the younger, of Maidstone
 in the said County of Kent Gent. the Office of Clerk
 of the Peace of and in the said County of Kent, with
 all Fees, Wages, Profits, Commodities, Emolu-
 ments and Duties whatsoever to the same Office acci-
 dent, incident, appendent, belonging, or in any wise
 appertaining, and I the said Henry Viscount Sydney
 do further by these Presents nominate, elect and ap-
 point, assign ordain, depute and constitute him the
 said Robert Saunders Clerk of the Peace of the said
 County of Kent, To have and to hold, and to enjoy
 the said Office, with all the Fees, Wages, Profits,
 Commodities, Emoluments and Duties abovesaid
 unto the said Robert Saunders, for and during so long
 Time as the said Robert Saunders shall demean himself ho-
 nestly in the said Office, and according to the true In-
 tent and Meaning of the Act or Acts of Parliament in
 that Case made and provided, to use and exercise the
 said Office of Clerk of the Peace of and in the said
 County of Kent by himself, the said Robert Saunders,
 or his sufficient Deputy or Deputies, for and during
 the Time aforesaid, and to have, perceive and receive
 and take to his own proper Use and behoof, for the
 exercising and Exercise of the said Office, all Fees,
 Wages, Profits, Commodities, Emoluments and
 Duties whatsoever to the said Office appertaining, in-
 cident, appendent or belonging, in as full and ample
 Manner and Form as any other Clerk or Clerks of the
 Peace of the said County of Kent, have heretofore had
 taken,

taken, perceived, received or enjoyed the same fees, wages, profits, commodities, emoluments and duties, or any of them. In witness whereof I the said Henry Viscount Sydney, have to these presents set my hand and seal the 29th Day of September, in the first Year of the Reign of our Sovereign Lord and Lady William and Mary, of England, Scotland, France, and Ireland, King and Queen, Defenders of the Faith, &c. Annoq; Domini 1689. Sidney. Sealed and deliver'd in the presence of Humfry May, George Robertson, prout per scriptum præd. ult. mentionat. præfat. Justitiariis ad Assisas & recognitoribus præd. modo hic ostens. probat. lect. & in Evidentia dat. plenius liquet & apparet Et quod Robertus Saunders ad tunc fuit persona habilis & idonea & sufficiens ad Officium illud exequend. & habend. & ad tunc & adhuc residens, in Com. præd. scilt. apud Maidstone præd. Et recognitores præd. ulterius dicunt super sacrament. suum præd. quod postea & ante præd. tempus quo, &c. scilt. ad generalem quarterialem Session. pacis dicti Domini Regis & Domine nuper Regine tent. apud Maidstone in & pro Comitatu Kanc. præd. septimo die Octobris Anno primo supradicto coram Nathaniel Powel Milite & Bar. Thoma Ryder Ar. & aliis sociis suis justitiar. dictorum Domini Regis & nuper Regine ad pacem in Comitatu præd. conservand. necnon ad diversas felonias Transgressiones & alia malefacta in eodem Comitatu perpetrata audiend. & terminand. assign. præd. Robertus Saunders junior admissus fuit Clericus pacis Comitatus Kancie præd. quodq; postea & ante præd. tempus quo, &c. scilt. præd. septimo die Octobris Anno primo supradicto in aperta Sessione Pacis præd. ultimo mentionat. ut præfertur tent. apud Maidstone in & pro Com. Kanc. præd. coram præfat. Justitiar. ultimo nominat. & aliis sociis suis præd. & antequam præd. Robertus Saunders junior intravit super Officii præd. Clerici pacis executionem ipse idem Robertus Saunders junior præstitit sacrament. supermentionat. in Actu Parliamenti præd. specificat. per quemlibet Clericum pacis præstand. & ad tunc & ibidem per eandem Curiam Session. Pacis admissus fuit in & ad Officium præd. Clerici pacis Comitatus Kanc. præd. Et recognitores præd. ulterius dicunt

cunt super sacrament. suum præd. quod præd. Robertus Saunders junior postea & ante tempus quo, &c. scilt. præd. septimo die Octobris Anno primo supradicto super execution. Officii Clerici pacis Com. Kanc. præd. super possession. præd. Philippi inde intravit & Officium illud cum vadiis & feodis adinde pertinen' à præd. septimo die Octobris Anno primo supradicto usq; diem captionis præd. Assisæ habuit tenuit & gavisus fuit & præfat. Philippum Owen per totum idem tempus ultimo mentionat. ab Officio suo prædicto extratenuit & vad. & feoda ad Officium præd. pertinen. per totum tempus ult. mentionat. recepit, sed utrum super totam materiam præd. per Recognitores præd. in forma præd. compert. præd. Robertus Saunders disseisivit præd. Philippum Owen de Officio præd. in visu ipsorum recognitor. posit. & in querela & Assisa præd. specificat. necne recognitores præd. penitus ignorant. Et ideo petunt advisament. & directionem præfat. Justitiar. ad Assisas & Curia hic & si super totam materiam præd. per recognitores præd. in forma præd. compert. videbitur præfat. Justitiar. ad Assisas & Curia hic quod præd. Robertus Saunders disseisivit præd. Philippum Owen de Officio præd. tunc recognitores præd. super sacrament. suum præd. dicunt quod præd. Robertus Saunders injuste & sine iudicio sed non vi & armis disseisivit præd. Philippum Owen de Officio præd. modo & forma prout præd. Philippus Owen superius versus eum queritur Et assid. damna ipsius Philippi Owen occasione disseisinæ præd. ultra misas & custagia sua per ipsum circa prosecutionem Assisæ præd. in hac parte apposit. ad ducent. septuaginta & quinq; libras & pro misis & custagiis illis ad quadraginta solidos Et si super totam materiam præd. per recognitores præd. in forma præd. compertam videbitur præfat. Justitiar. ad Assisas & Curia hic quod præd. Robertus Saunders non disseisivit præd. Philippum Owen de Officio prædicto tunc Recognit. præd. super sacrament. suum præd. dicunt quod præd. Robertus Saunders nullam injuriam sive disseisinam præfat. Philippo Owen de Officio præd. fecit prout præd. Robertus Saunders superius placitando allegavit Et quia præfat. Justitarii ad Assisas & Curia hic de iudicio suo de & super præmissis reddendo nondum advisantur dies inde dat. est partibus prædictis coram

ram præfat. Justitiar. ad Assisas, &c. ad Cameram præfat. Edwardi Ward militis capitalis Baron. in interiori Templo London. die Sabbati secundo die Novembris prox. futur. ad horam nonam ante meridiem ejusdem diei ad audiendum inde iudicium suum ac eo quod præfat. Justitiar. ad Assisas, &c. & Curia hic nondum, &c. And after several the like Continuances to the 28th Day of January. 7 Regis. the last was Ad quem quidem diem Martis vicesimum octavum diem præd. mensis Januarii Anno septimo supradicto ad horam sextam ejusdem diei hic scilicet. apud præd. Cameram præfat. Capitalis Baron. in interiori Templo London. præd. coram præfat. Justitiar. ad Assisas, &c. venerunt tam præd. Philippus Owen quam præd. Robertus Saunders in propriis personis suis & super hoc dies dat. est eis essendi coram Justitiar. dicti Domini Regis nunc de Banco in Banco apud Westm. in Crastino Purification. Beate Mariæ prox. futuro de audiend. & recipiend. quod eisdem Justitiariis Domini Regis apud Westm. præd. actunc & ibidem considerand. videbitur in hac parte eo quod præfat. Justitiar. ad Assisas, &c. nondum, &c. & Assisa præd. cum omnibus eam tangen. eisdem Justitiar. de Banco mittitur, &c.

Owen

Owen versus Saunders.

The Plaintiff sets forth, That the Defendant disseised him of the Office of Clerk of the Peace for the County of Kent; and for his Title he alledged that it was an ancient Office, and that by an Act of Parliament made Anno 1 W. it was enacted, That the Custos Rotulorum, &c. should nominate and appoint the Clerk of the Peace, &c. to execute the said Office by himself, or his Deputy, *so long as he should behave himself well therein*; that Henneage, Earl of Winchelsea, was Custos Rotulorum, to whom the Right of appointing a Clerk of the Peace did belong, and that he nominated and appointed the Plaintiff to be Clerk of the Peace for the said County of Kent, the said Office being then void; that he was qualified to execute the same, and had taken the Oath required by the said Act, and that he was admitted into the said Office, and executed the same, and had the Profits thereof, and behaved himself well therein, and so was seised of the same for his Life, until he was disseised by the Defendant; for which he brought this Assise, &c.

The Defendant pleaded that the Plaintiff was never seised of the said Office, and so was never disseised by him; and thereupon they were at issue, and the Recognitors gave a Special Verdict to this Effect:

It. They find the Act of Parliament 1 W. cap. 21. to enable Commissioners of the Great Seal to Act as Lord Chancellor or Lord Keeper, by which it is enacted, That the Custos Rotulorum shall appoint the Clerk of the Peace, &c. That the Earl of Winchelsea was Custos Rotulorum of the County of Kent, who by a Writing under his hand and Seal named the Plaintiff to be Clerk of the Peace for the said County *during his Pleasure*; which Writing being produced to the Justices of the Peace in their Sessions, and a Que-

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tion arising about the Validity thereof, it being a Deputation *during Pleasure*, when the Statute requires it should be *so long as he behave himself well, &c.* The Justices then refused to admit the Plaintiff into the said Office: They find that the Sessions was adjourned from Maidstone to Canterbury, and that the Earl of Winchelsea came to that Sessions and caused the said Writing then and there to be read, and then declared that he did nominate and appoint the Plaintiff to be Clerk of the Peace for the County of Kent, according to the Act of Parliament; that upon this Nomination the Plaintiff was admitted by the Court into the said Office, and held and enjoyed the Profits thereof, &c. they find the Death of the Earl of Winchelsea soon afterwards, and that Henry Lord Viscount Sydney was made Custos Rotulorum of the County of Kent; who by a Writing under his Hand and Seal did nominate and appoint the Defendant Robert Saunders to be Clerk of the Peace for the said County for *so long Time as he should behave himself well therein*; they find that he was a fit Person to execute the same, and that he was admitted into the Office; but before he entered upon the Execution thereof he took the Oath enjoined by the Statute; they find that the Defendant did afterwards take upon himself the Execution of the said Office, and entered in and upon the Possession of the Plaintiff; but whether he disseised him thereof or not they cannot tell; and so make a general Conclusion, &c.

The Case in short was thus, viz. The Plaintiff Owen obtained a Deputation from the late Lord Winchelsea, who was then Custos Rotulorum for the County of Kent, to be Clerk of the Peace, &c. which Deputation was granted since the Act made for enabling Commissioners of the Great Seal to execute the Office of Lord Chancellor or Lord Keeper; in which Act the Matter relating to the Custos Rotulorum and his Nomination and Appointment of the Clerk of the Peace is included.

The

The Justices of the Peace at the Sessions at Maidstone refused to admit the Plaintiff into the Office upon producing his Deputation, because it was granted to him durante beneplacito; and therefore they were of Opinion it was void, because it is expressly enjoined by the Statute, that whoever is nominated and appointed to the Office shall hold it as long as he behaves himself well therein.

The Custos Rotulorum finding this Defect in the Deputation, did afterwards, at an adjourned Sessions at Canterbury, (the Plaintiff being then present) tell the Court, That according to the Act he did nominate and appoint the Plaintiff to be Clerk of the Peace for the said County; whereupon he took the Oath required by Law, and was admitted, and did execute the Office for some Time, and took the Profits thereof; then the Lord Winchelsea died, and a new Custos was made, who nominated and appointed the Defendant to be Clerk of the Peace, but it was by a Writing under his Hand and Seal; and thereupon he entered and disseised the Plaintiff of his Office, and ever since enjoyed the same.

The Plaintiff afterwards brought a Mandamus to be restored to this Office, which was three or four Years depending in the Court of King's Bench; and in Trinity Term the Court gave their Opinion for the Defendant; and their Reason was, because the Plaintiff's Deputation from my Lord Winchelsea was not pursuant to the Act 1 W. and therefore void.

The Plaintiff therefore brought an Assise for the Office, and laid the Disseisin to be at Maidstone, which in Fact was so, tho' his Nomination and Appointment was at Canterbury; and to prove his Title, he produced at the Trial the Earl of Winchelsea's Patent, by which he was made Custos, &c. for the County of Kent; then he produced a Copy of the Act of Parliament, examined by the Roll.

Then

Then he proved by two Witnesses that the Earl of Winchelsea did nominate and appoint him to be Clerk of the Peace; he likewise proved by other Witnesses that he had taken the Oath required by the Statute, and that he was an Utter-Barrister.

He likewise proved that he was resident in Kent at the Time of the Deputation, and after his Admission to the Office, and that he executed the same, and received the Fees thereof.

And lastly, he proved that he was disseised by the Defendant, and he likewise proved the yearly Value of the Office, and how long Time the Defendant had executed it.

AN
ASSISE
 FOR THE
OFFICE
 OF
 Marshal of the King's
 Bench.

*Placita coram Domino Rege & Domina Regina
 apud Westm. de termino Paschæ Anno Regni
 Domini Willielmi Tertii & Domine Mariæ
 nunc Regis & Regine Angliæ, &c. quinto.
 Rot. 27.*

Midd.

ASSISA ven. recognitur. si Willielmus
 Lenthall Ar. Henricus Glover Gen. Tho-
 mas Cook Gen. Samuel Ellis Gen. Jo-
 hannes Philpot Gen. Willielmus Briggs
 Gen. & Johannes Farrington Gen. injuste &c. disseisiver.
 Thomam Seviar Gen. de libero tenemento suo in Westm.

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infra

infra triginta Annos &c. Et unde idem Thomas Seviar per Gabriel. Leach Attorn. suum queritur quod disseisiver. eum de Officio. Mar. Marescal. Domini Regis & Dominae Reginae coram ipso Rege & Regina cum pertinentiis &c. Et pro titulo liberi tenementi de Officio præd. cum pertinen. & Assisam præd. habend. idem Thomas Seviar dicit quod Officium præd. est antiquum Officium in ista Curia & ad hanc Curiam spectan. pro custodiendo & in custodiam recipiend. prisonarios & personas per istam eandem Curiam prisonæ commissos & ducendo ad barram hujus Curia hujusmodi personas & prisonarios quoties occasio fuerit ac hujusmodi Mar. Marescal. ratione Officii ill. incumbit ad Curiam hic indies attendere causa recipiendi in custodiam suam hujusmodi personas per eandem Curiam prisonæ commissas & alia per istam Curiam mandata sibi exequend. quodque dictum Officium est & ab antiquo fuit per concessionem regiam dimissum & dimissibile concessum & concessibile alicui personæ idoneæ in feodo simplici & per hujusmodi personam ex hujusmodi concessione inde in feodo simplici seisit. ulterius dimissum & dimissibile concess. & concessibile alicui aliæ personæ idoneæ ad Officium illud exequend. & exercend. pro termino vitæ suæ quamdiu se bene gesserit in eodem de quo quidem Officio cum pertinen. præd. Willielmus Lenthall fuit ex concessione regia seisit. ut de feodo & jure tempore pacis tempore Domini Caroli secundi nuper Regis Angliæ & sic inde seisit. existen. idem Willielmus viceffimo quinto die Novembris Anno Domini millesimo sexcentesimo octogesimo quarto apud Westm. præd. per quoddam scriptum suum adtunc & ibidem fact. quod idem Thomas Seviar Sigillo ipsius Willielmi Lenthall figillat. hic in Curia profert geren. dat. eisdem die & anno concessit Officium præd. cum pertinen. eidem Thomæ Seviar personæ idoneæ ad Officium illud exercend. & exequend. existen. Habend. & tenend. eidem Thomæ cum pertinen. pro termino vitæ suæ Virtute cujus concessionis idem Thomas Seviar fuit seisit. de Officio præd. cum pertinentiis ut de libero tenemento pro termino vitæ suæ quousque ipse dictus Willielmus Lenthall ac præd. Henricus Thomas Cook Samuel Johannes Philpot Willielmus Briggs & Johannes Farrington ipsum inde injuste & sine
judicio

judicio disseisiver. Et inde petit Assisam &c. Et super hoc præd. Henricus Glover Thomas Cook Samuel Ellis & Johannes Philpot solemniter exact. non venerunt & Vic. modo mand. quod ipsi nil habent nec eorum aliquis aliquid habet &c. nec habent Ballivum nec eorum aliquis habet Ballivum neque Ballivos &c. nec sunt invent. nec eorum aliquis est invent. &c. Ideo Assisa præd. capiatur versus eos per default. Et præd. Willielmus Briggs & Johannes Farrington in propriis personis suis ven. & recogn. exact. simil. ven. & super hoc præd. Willielmus Lenthall Willielmus Briggs & Johannes Farrington petunt auditum brevis Assisæ præd. & eis legitur in hæc verba.

ff. Gulielmus & Maria Dei Gratia Angliæ Scotiæ Franciæ & Hiberniæ Rex & Regina Fidei Defensores, &c. Vic. Midd. salutem Questus est nobis Thomas Seviar generosus quod Willielmus Lenthall Ar. Henricus Glover Gen. Thomas Cook Gen. Samuel Ellis Gen. Johannes Philpot Gen. Willielmus Briggs Gen. & Johannes Farrington alias Farringdon Gen. injuste & sine judicio disseis. eum de libero tenemento in Westm. infra triginta Annos jam ultimo elapsos Et ideo tibi præcipimus quod si præd. Thomas Seviar fecerit te securum de clam. suo prosequend. tunc facias tenementum ill. re-seis. de catallis quæ in ipso capta fuerunt & ipsum tenementum cum catallis esse in pace usq; diem Lunæ in quinque septiman. Paschæ Et interim facias duodecim liberos & legales homines de vican. illo videre ten. illud & nomina eorum imbrevari & summonneas eos per bonos summonitores quod tunc sint coram nobis apud Westm. ad diem præd. parati inde facere recognitionem & pone per vadios & salvos plegios præd. Willielmum Henricum Thomam Cook Samuel. Johannem Willielmum & Johannem vel Ballivos suos si ipsi non invent. fuerint quod tunc sint ibi ad audiend. illam recognitionem & habeas ibi nomina pleg. & hoc Breve Teste nobis ipsis apud Westm. quarto die Maii Anno Regni nostri quinto Fish. Petunt etiam iidem Willielmus Lenthall Willielmus Briggs & Johannes Farrington audit. retorn. brevis Assisæ præd. & eis legitur in hæc verba Pleg. de prof. Johan.

Johannes Doe Richardus Roe Infranominat. Willielmus Briggs attachiat. est per plegios scilt. Thomam Weaver & Richardum Watts infranominat. Willielmus Lenthall Henricus Thomas Cook Samuel Johannes Philpot & Johannes Farrington alias Farringdon nil habent nec eorum aliquis aliquid habet in Balliva mea per quod attachiari possunt nec habent nec eorum aliquis habet Ballivum vel Ballivos nec sunt invent. nec eorum aliquis est invent. in Balliva mea Residuum execution. istius Brevis patet in quodam pannello huic Brevi annex. Respons. Thomæ Lane Militis & Thomæ Cook Mil. Vic. Petunt etiam iidem Willielmus Lenthall Willielmus Briggs & Johannes Farrington auditum præscripti concessionis Officii præd. & eis legitur in hæc verba.

¶ Articles of Agreement indented, concluded and made the twenty-fifth Day of November, in the Year of our Lord one thousand six hundred eighty-four, between William Lenthall of Great Basely in the County of Oxon Esq; of the one Part, and Thomas Seviar of St. George the Martyr in the Borough of Southwark in the County of Surrey Gent. of the other Part, as followeth: That the said William Lenthall, for and in Consideration of the Sum of forty and five Pounds to him in hand paid before the sealing and delivering of these Presents, and in Consideration of the yearly Rent or Sum of Money herein after mentioned, doth by these Presents grant, and for himself, his Heirs, Executors and Administrators, doth covenant with the said Thomas Seviar, his Executors and Assigns, well and truly to convey all that the Office of the Marshal of the Marshalsea, held before our Sovereign Lord the King, his Heirs and Successors, and the Prison thereunto belonging, and the Custody of all Prisoners that shall be committed to the said Thomas Seviar or his Assigns, for and during his natural Life, To have, hold and enjoy and exercise the said Office, with the Rights, Members, and Appurtenances thereof, immediately from and after the Death, Surrender, Forfeiture, or other Determination of the Estate

Estate of Henry Glover of and into the said Office, in Consideration whereof the said Thomas Seviar doth hereby covenant and agree to and with the said William Lenthall to pay unto the said William Lenthall, his heirs, Executors, or Assigns, the yearly Rent or Sum of sixteen hundred Pounds by quarterly Payments, at the four most usual Feasts in the Year, and also to pay unto him the said William Lenthall, upon the Sealing and Delivery of the said Conveyance and Assurance, so to be made and executed unto the said Thomas Seviar, the Sum of three hundred fifty-five Pounds, which is hereby agreed and so declared to be for the first quarterly Payment. In Witness whereof the Parties have hereunto set their Hands and Seals the Day and Year first above-written. And it is further agreed and concluded that the said Thomas Seviar shall give Term Statutes, in a thousand Pounds each Statute, to the said William Lenthall, and the same to be recorded for the Performance of the said Covenant and Agreement in the said Assurance to be compassed. In Witness as aforesaid the Parties above-mention'd have hereunto set their Hands and Seals the Day and Year first above-written.

Quibus lectis & auditis iidem Willielmus Lenthall Willielmus Briggs & Johannes Farrington dicunt quod ipsi nullam injuriam sive disseisinam præfat. Thomæ Seviar de tenementis præd. cum pertin. in visu possit. & in querela præd. specificat. fecer. Et de hoc pon. se super Assisam Et præd. Thomas Seviar similiter &c. Ideo capiatur inter eos Assisa &c. Et quia Recognitores præd. non habuer. visum tenementi præd. in querela præd. specificat. Ideo dies dat. est Recognitoribus præd. coram Domino Rege & Domina Regina apud Westm. usque diem lunæ prox. post Octab. Sanctæ Trinitatis & præcept. est vic. quod distringat præd. Recognitores per omnes terras &c. & quod de exitibus &c. ita quod habeat Corpora eorum coram dictis Domino Rege & Domina Regina apud Westm. præd. die lunæ prox. post Octab. Sanctæ Trinitatis ad recognoscend. in forma præd. & interim faciat Recognitores ill. habere visum &c. idem dies dat. est partibus præd. ad compar-

rend. ibidem &c. Ad quem diem hic ven. tam præd. Thomas Seviar per Attorn. suum præd. quam præd. Willielmus & Willielmus & Johannes Farrington in propriis personis suis & præd. Recognitores Assise præd. exact. similiter ven. qui ad veritatem de præmissis dicend. elect. triat. & jurat. fuer. ac a Barra hic de veredicto suo inde reddend. & colloquend. recesser. ac inde inter se collocat. & agreeat. ad veredictum suum inde reddend. ad Barram hic revererunt super quo Thomas Seviar solemniter exact. non revenit nec est breve suum præd. versus eisdem Willielmum Willielmum & Johannem Farrington ulterius prof. Ideo cons. est quod præd. Thomas Seviar nil capiat per Breve suum præd. sed quod ipse & pleg. sui de prof. sint in misericordia & præd. Willielmus Willielmus & Johannes Farrington eant inde sine die &c. Et ulterius cons. est quod præd. Willielmus Willielmus & Johannes Farrington recuperent versus præfat. Thomam Seviar viginti & novem libras pro misis & custagiis suis per ipsos circa defensionem suam in hac parte sustent. eisdem Willielmo Willielmo & Johanni Farrington per Cur. dictorum Domini Regis & Domine Regine nunc hic ex assensu suo adjudicat. & præd. Willielmus Willielmus & Johannes Farrington habeant inde executionem, &c.

This was an Assise brought by the Plaintiff against Mr. Lenthall and several others, for disseising him of the Office of the Marshal of the Marshalsea of the King, &c. with the Appurtenances, setting forth, That the same was an ancient Office belonging to the Court of King's Bench, to take into Custody and to detain such Persons who should be committed by the said Court, and to bring them to the Bar as often as there should be Occasion, and that the Marshal for that Purpose did daily attend the Court to receive Prisoners, and to obey all other the Commands of the Court, and that the said Office is, and always was grantable and granted by the King to any fit Person to hold the same in Fee-Simple, and is and always was grantable and granted by such Person to any other qualified to exercise the same during his Life, or as long as he should behave himself well in the said Office;

lice; That King Car. 2. did grant the said Office to the Defendant William Lenthall in Fee-simple, and that that he being so leased, did on the 25th Day of November 1684, by a Deed executed by him grant the same to the Plaintiff Seviar, being a Person fit to execute it, for Life; by Virtue whereof he was seised of the said Office until he was disseised by the Defendants, and thereupon he brought this Assise.

Four of the Defendants did not appear, against whom the Assise was taken by Default: Mr. Lenthall Briggs and Farrington appeared and prayed Oyer of the Writ and Return, which was read to them in hac verba; they also prayed Oyer of the Grant of the Office to the Plaintiff, which was likewise read in hac verba; and then they plead nil tort nil disseisin, and thereupon they were at Issue; and because the Recognitors had not viewed the Place, &c. a Day was given for that Purpose, and that they appear in Trinity Term, at which Time the Defendants and Recognitors appeared, but the Plaintiff did not appear, and thereupon Judgment was given quod nil capiat per Breve; but that he and his Pledges should be in misericordia, and that the Defendants should recover against him 29 l. for Costs, &c.

By this Precedent the Form of a Return of a Writ of Assise may be seen as well where the Tenants appear, as where they make Default; for those who appeared and craved Oyer of the Writ and Return, were attachiati per plegios, &c. but as to those who made Default, the Return was, That nil habent, &c. per quod attachiari possunt, &c. The Record may likewise serve to rectify the Report of Serjeant Salkeld, who is mistaken in every Part of this Case; for he tells us, The Counsel was ready at the Bar to arraign the Assise in French, but the Recognitors did not appear; and that the Chief Justice ordered the Writ to be read, and said it might be returnable on any Common Day, or Return Day, and that the Demandant did not appear, so that the Court ordered the Assise to be adjourned to the next Day, and then it was arraigned, and

and the Tenants were demanded, that the Plaintiff might count against them; but he was not ready, and therefore prayed that it might be adjourned to another Day, but it was denied; for this is *Festinum remedium*, and the Tenants are to plead presently, which they cannot do when they have nothing to plead to; whereupon the Demandant was nonsuit: And *Nota*, The Court told him that he might bring a new Affise. Now by the Record it is evident that the Recognitors did appear, and that the Affise was arraigned; but because they had not viewed the Place, &c. it was adjourned to the next Term, and then they appeared again, and so did the Plaintiff, and counted against the Tenants, and they pleaded nul tort nul disseisin, which is the issuable Plea in this Action; and that after the Evidence was given, the Recognitors were withdrawn, to consider of their Verdict; and being agreed on it, and returning into Court, then and not before the Plaintiff being called, did not appear; whereupon he was nonsuit, and the Defendants had a Verdict for 29 l. Costs, &c.

THE

THE APPENDIX.

An Affise for Lands and Te- nements.

ASSISA ven. recognitur. si Edwardus Vava-
for Ar. & Georgius Vavafor Gen. &c. injuste,
&c. disseis. Thomam Dowman Ar. & Elizabeth.
uxorem ejus de libero tenemento suo in Spal-
dington &c. infra triginta Annos jam ult. elaps. &c.
Et unde idem Thomas & Elizabetha per Henricum Cres-
sy Attorn. suum quer. quod disseis. eos de sex Messua-
giis trescentis Acris terræ centum acris prati & ducentis
acris pastur. cum pertin. &c.

Et præd. Edwardus & Georgius per Edwardum La-
timer Attorn. suum ven. & super hoc certis de causis ju-
stitiar. hic specialiter movent. dies dat. est coram eisdem
justitiar. præfat. Edwardo ad placitand. hic usque diem
Jovis prox. futur. &c. idem dies dat est præfat. Thomæ
& Elizabethæ hic &c. Ad quem diem ven. tam præd.
Thomas & Elizabetha quam præd. Edwardus & Geor-
gius per Attorn. suos præd. & super hoc certis de cau-
sis Justitiar. hic specialiter movent. Affisa præd. ulterius

D d

adjornat.

adjornat. est coram eisdem Justitiar. usque hospitium Justitiar. in Chancery-Lane London. usq; Crastinum Sancti Martini proximum futur. Ad quem diem apud præd. hospitium Justitiar. coram præfat. Justitiar. ven tam præd. Thomas & Elizabetha quam præd. Edwardus & Georgius per Attornatos suos præd. & super hoc præd. Georgius dicit quod ipse nil habet in præd. tenementis cum pertin. in visu Recognitorum Assisæ præd. posit. & in querela præd. specificat. nec habuit die impetrationis Brevis originalis Assisæ præd. seu unquam postea nec aliquam injuriam sive disseisinam præfat. Thomæ & Elizabethæ inde fecit Et de hoc pon. se super Assisam Et præd. Thomas & Elizabetha similiter Ideo capiatur inde inter eos Assisa &c.

Et præd. Edwardus respond. ut tenens liberi tenementi præd. tenementorum cum pertin. in visu Recognitor. Assisæ præd. posit. & in querela præd. specificat. & dicit quod Assisa inde inter ipsum Edwardum & præfat. Thomam & Elizabetham fieri non debet quia dic. quod quidam Petrus Vavasor Ar. fuit seifitus de præd. tenementis cum pertin. in visu recognitor. præd. posit. & in querela præd. specificat. inter alia in Dominico suo ut de feodo ipsoq; Petro sic inde seifit. existen. quidam Andreas Windsor Ar. Petrus Vavasor jun. & Johannes Lauder gen. alias scilt. secundo die Januarii Anno Regni Domine Regine nunc quinto decimo extra Cur. Cancellar. ejusdem Domine Regine eadem Curia Cancellar. apud Westm. in Com. Midd. tunc existen. prosecut. fuerunt quoddam breve dictæ Domine Regine de ingressu super disseisinam in le post versus præfat. Petrum Vavasor Ar. de prædictis tenementis cum pertin. in visu recogn. Assisæ prædict. posit. & in querela præd. specificat. cum pertin. inter alia ipso Petro Vavasor Ar. ad tunc tenen. liberi tenementi eorundem tenementorum cum pertin. inter alia existen. tunc Vic. Com. Eborum præd. direct. (and so the Common Recovery was set forth) Quæ quidem recuperatio in forma præd. habita habebatur & fuit ad usum præd. Petri Vavasor pro termino Vitæ suæ naturalis absque impetitione alicujus Vasti & post ejus decessum tunc ad

ad usum senioris filii legitime procreat. de corpore ipsius Petri Vavasor Armigeri & hæredum masculorum de corpore ejusdem senioris filii legitime procreat. & pro defectu talis exitus masculi de corpore hujusmodi senioris filii tunc ad usum secundi filii de corpore præd. Petri Vavasor Ar. legitime procreat. & hæredum masculorum de corpore ejusdem secundi filii legitime procreat. (and so to the ninth Son) & pro defectu talis exitus masculi de corpore hujusmodi noni filii tunc ad usum ipsius Edwardi Vavasor modo defend. Patris præd. Petri Vavasor Ar. pro termino vitæ suæ naturalis absque impetitione Vasti & post ejus decessum tunc ad usum senioris filii legitime procreat. de corpore ejusdem Edwardi & hæredum masculorum de corpore præd. filii senioris legitime procreat. & pro defectu talis exitus masculi de corpore hujusmodi filii senioris tunc ad usum secundi filii de corpore ipsius Edwardi legitime procreat. & hæredum masculorum de corpore præd. secundi filii legitime procreat. (and so to the ninth Son of Edward) & pro defectu talis exitus masculi de corpore hujusmodi filii noni tunc ad usum cujusdam Georgii Vavasor alterius fratris præd. Petri Vavasor Ar. pro termino vitæ suæ naturalis absque impetitione vasti & post ejus decessum tunc ad usum senioris filii legitime procreat. de corpore præd. Georgii & hæredum masculorum suorum de corpore illius senioris filii legitime procreat. & pro defectu talis exitus masculi de corpore hujusmodi filii senioris tunc ad usum secundi filii de corpore præd. Georgii legitime procreat. & hæredum masculorum de corpore illius secundi filii legitime procreat. (and so to the ninth Son of George; and in like Manner to Ralph, Marmaduke, Robert, Thomas and Richard, the Brothers of the said Peter Vavasor in Tail-male) & pro defectu talis exitus masculi tunc ad usum hæredum masculorum de corpore Petri Vavasor de Spaldington militis legitime procreat. & pro defectu talis exitus masculi tunc ad usum rectorum hæredum præd. Richardi Vavasor in perpetuum Virtute cujus quidem recuperationis & seisinæ modo & forma præd. habit. ac vigore cujusdam actus in Parlamento Domini Henrici nuper Regis Angliæ octavi quarto die Februarii

arii Anno Regni sui vicesimo septimo de usibus in Possessionem transferend. apud Westmonasterium in Com. Midd. tent. edit. præd. Petrus Vavasor Ar. fuit seisit. de præd. tenementis cum pertin. in visum Recognitor. Assisæ præd. posit. & in querela præd. specificat. inter alia in Dominico suo ut de libero tenemento pro termino vitæ suæ absque impetitione Vastii Remanere inde post ejus decessum ulterius prout superius spectan. ipsoq; Petro sic inde seisit. existen. idem Petrus apud Spaldingstofi præd. obiit sine aliquo exitu masculino de corpore suo legitime procreat. post cujus mortem idem Edwardus in præd. tenementa cum pertin. in visum Recognitorum Assisæ præd. posit. & in querela præd. specificat. inter alia ut in remanere suo inde intravit & fuit & adhuc est seisitus in dominico suo ut de libero tenemento pro termino vitæ suæ absque impetitione alicujus Vastii Et præd. Tho. Dowman & Eliz. clamand. &c.

Et præd. Tho. Dowman & Eliz. quoad præd. placitum præd. Edwardi superius in Barra Assisæ præd. placitat. dicunt quod ipsi per aliqua in eodem placito præallegat. ad Assisam præd. de tenementis præd. cum pertin. habendi præcludi non debent quia dicunt quod bene & verum est quod præd. Petrus Vavasor Ar. fuit seisitus de tenementis præd. cum pertin. in dominico suo ut de feodo ipsoq; Petro sic inde seisit. existen. præd. recuperatio tenementorum præd. cum pertinen. habit. fuit per præd. Andream Windsor Willielmum Vavasor Petrum Vavasor juniorem & Johannem Lauder versus præd. Petrum Vavasor Ar. modo & forma prout præd. Edwardus superius allegavit sed iidem Thomas Dowman & Elizabetha ulterius dicunt quod recuperatio præd. per præfat. Andream Willielmum Vavasor Petrum Vavasor jun. & Johannem Lauder versus præfat. Petrum Vavasor Ar. de tenementis præd. cum pertin. in forma præd. habit. & seisina tenementorum præd. cum pertin. superinde in forma præd. habit. fuerunt ad solum opus & usum præd. Petri Vavasor Ar. & Hæred. suorum in perpetuum quorum prætextu & vigore præd. actus de usibus in possessionem transferend. &c. præd. Petrus Vavasor Ar. fuit seisitus de præd. tenementis cum pertin.

pertin. in Dominico suo ut de feodo & sic inde seisit. existen. idem Petrus Vavasor Ar. apud Spaldington præd. de tali statu suo obiit inde seisit. sine exitu de corpore suo legitime procreat. post cuius mortem eadem tenementa cum pertin. descend. eidem Elizabethæ adtunc uxori ipsius Thomæ Dowman existen. & Sorori & Hæred. præd. Petri Vavasor Ar. per quod iidem Thomas & Elizabetha in eadem tenementa cum pertin. intraver. & fuerunt inde seisit. in dominico suo ut de feodo in jure ipsius Elizabethæ quousq; præd. Edwardus Vavasor ac præd. Georgius Richardus Johannes Lawton, &c. ipsas Thomam Dowman & Elizabeth. inde injuste & sine iudicio disseis. prout ipsi superius versus eos queruntur absq; hoc quod recuperatio præd. tenementorum præd. cum pertin. per præfat. Andream Windsor Willielmum Vavasor Petrum Vavasor jun. & Johannem Launder versus præfat. Petrum Vavasor Ar. in forma præd. habit. fuit ad usus in Barra præd. Edwardi superius specificat. prout &c. *Issue was taken upon this Craverle, and a Special Verdict found, viz. Jur. dicunt super sacramentum suum quod præd. Petrus Vavasor Ar. fuit seisit. de tenementis præd. in eorum visu posit. & in querela præd. specificat. cum pertinen. in dominico suo ut de feodo ipsoq; Petro sic inde seisit. existen. præd. recuperatio habit. fuit per præfat. Andream Windsor Willielmum Vavasor Petrum Vavasor Jun. & Johannem Launder versus præfat. Petrum Vavasor Ar. de eisdem tenementis cum pertinen. modo & forma prout præd. Edwardus superius placitando allegavit Et ulterius Recognitor. Assise præd. dic. super sacramentum suum quod quædam Indentura facta fuit inter præfat. Petrum Vavasor Ar. ex una parte & præd. Andream Windsor Willielmum Vavasor Petrum Vavasor jun. & Johannem Launder ex altera parte geren. dat. primo die Februarii Anno quinto decimo supradicto cuius quidem Indenturæ tenor sequitur in hæc verba : Here the Indenture was set forth, leading the Uses of the Recovery.*

Et ulterius Recognitores præd. dicunt super Sacramentum suum præd. quod præd. tenementa cum pertin. in eorum visu posit. & in querela præd. specificat. & in Recuperatione præd. comprifat. sunt parcella maneriorum terrarum & tenementorum in Indentura præd. specificat. & non alia neque diversa sed utrum Indentura præd. post recuperationem præd. per præfat. Petrum Vavasor Ar. in forma præd. fact. & habit. geren. dat. præd. primo die Februarii ac primo deliberat. præd. quinto decimo die Februarii Anno quinto decimo supradicto post recuperation. præd. existen. ad usus in eadem specificat. sit bona & sufficien. in lege ad ducend. & declarand. Anglice (to lead and declare) usus præd. recuperationis præd. tenementorum in visu recognitorum præd. posit. & in querela præd. specificat. cum pertin. necne iidem Recognitores penitus ignorant. Et inde petunt advisamentum Justitiar. præd. & Curiae hic &c. Et si eisdem Justitiariis & Curiae hic videbitur quod Indentura prædict. per præfat. Petrum Vavasor Ar. post præd. recuperationem in forma præd. facta & habita geren. dat. prædicto primo die Februarii ac primo deliberat. præd. quinto decimo die Februarii Anno quinto decimo supradict. post recuperationem præd. existen. ad usus in eadem specificat. sit bona & sufficiens in lege ad ducend. & declarand. Anglice (to lead and declare) usus recuperationis præd. de tenementis præd. in visu Recognitor. prædict. posit. cum pertin. & in querela prædicta specificat. tunc iidem Recognitores dicunt super Sacramentum suum præd. quod eadem recuperatio de tenementis prædictis in visu Recognitorum præd. posit. cum pertinen. & in querela præd. specificat. fuit ad eisdem usus in eadem Barra ipsius Edwardi specificat. modo & forma prout idem Edwardus in Barra sua præd. superius allegavit Et quod præd. Georgius Richardus, &c. non disseisiver. præfat. Thomam Dowman & Elizabetham de tenementis præd. in eorum visu posit. & in querela præd. specificat. cum pertinen. prout iidem Georgius & Richardus &c. superius allegaverunt Et si videtur eisdem Justitiar. & Curiae hic quod Indentura præd. per prædict. Petrum Vavasor Ar. post recuperationem præd. in forma præd. fact. & habit. geren. dat. præd. primo die
 Februarii

Februarii ac primo deliberat. præd. quinto decimo Februarii Anno quinto decimo supradicto post recuperationem præd. minus sufficien. in lege existit ad ducend. & declarand. Anglice (*to lead and declare*) usus recuperationis præd. tenementorum præd. in visu recognitorum posit. & in querela præd. specificat. tunc iidem Recognitores dicunt super Sacramentum suum præd. quod eadem recuperatio tenementorum præd. non fuit ad eosdem usus in eadem Barra ipsius Edwardi specificat. modo & forma prout præd. Thomas Dowman & Elizabetha superius allegaverunt Et quod præd. Thomas Dowman & Elizabetha fuer. seisit. de tenementis præd. in visu eorundem recognitorum posit. & in querela præd. specificat. cum pertinen. in Dominico suo ut de feodo in jure præd. Elizabethæ quousq; præd. Edwardus Vavasor Georgius Vavasor &c. ipsos Thomam Dowman & Elizabetham inde injuste & sine judicio sed non vi neque Armis disseis. & tunc assidunt damna ipsorum Thomæ Dowman & Elizabethæ occasione disseisinæ præd. ultra misas & custagia sua per ipsos circa sectam suam in hac parte apposit. ad viginti solid. & pro misis & custagiis illorum ad decem solidos Et quia Justitiar. hic se advisare volunt de & super præmissis priusquam judicium inde reddant dies dat. est partibus præd. coram Justitiariis hic præd. apud hospitium Justitiar. in Chancery-Lane London. usque diem Sabbati prox. post mensem Sancti Michaelis prox. futur. &c. de judicio suo inde audiend. eo quod iidem Justitarii hic inde nondum, &c. (*Et diversæ aliæ continuationes usq; diem Sabbati prox. post Crastinum Sancti Martini &c. usq; ad diem Mercurii prox. post Octab. Sanctæ Trinitatis &c.*) Ad quem diem coram præfato Roberto Shute & Johanne Clench tunc Justitiariis &c. apud præd. hospitium Justitiar. tum præd. Thomas Dowman & Elizabetha quam præd. Edwardus Georgius &c. per attornat. suos præd. comparuere Et quia Justitiar. præd. hic inde nondum &c. dies dat. est ulterius partibus præd. coram Justitiariis dictæ Domine Regine ad Assisas in præd. Com. Eborum capiend. assignat. apud præd. Castrum Eborum usque diem Lunæ sextum diem Augusti prox. futur. &c. ante quem diem dicta Domina Regina nunc per

per alias literas suas patentes quarum dat. est apud Westm. Anno Regni sui vicefimo quarto quarum tenor sequitur in hæc verba &c. Elizabetha &c. dilectis & fidelibus suis Johanni Clench tertio Baron. & Francisco Gawdy uni servien. suorum ad legem salutem Sciatis, &c. (Here follow the Letters Patent) Et quia iidem Justitiar. hic ulterius se advisare volunt de & super Præmissis priusquam iudicium inde reddant dies, &c. coram eisdem Johanne Clench & Francisco Gawdy tunc Justitiar. &c. ad prædict. hospitium usque diem Sabbati prox. post crastin. Animarum &c. ad quem diem præd. Johan. Clench & Franciscus Gawdy tunc Justitiar. dictæ Domine Regine ad Assisas in præd. Com. Eborum apud hospitium præd. non venerunt sed a dicto hospicio se retraxerunt eo quod ante diem illum propter infectionem aeris & pestilentie mortalis hominum in Civitate London. & Suburbis ejusdem ac in Civitate Westm. tunc existen. Terminus Sancti Michaelis qui tunc apud Westm. in Com. Midd. teneretur a Westm. præd. usque castrum Domine Regine &c. adjornatur & ibidem tent. &c. Et postea dicta Domina Regina per alias literas suas patentes constituit Johannem Clench & Franciscum Rodes unum servien. suorum ad legem Justitiaros ad Assisas in præd. Com. Ebor. &c. & dicti Justitarii virtute dictarum literarum patent. postquam scilicet die Lunæ in quarta septimana Quadragesimæ Anno Regni dictæ Domine Regine nunc vicefimo quinto apud Castrum Eborum venerunt coram quibus tunc & ibidem ven. præd. Thomas Dowman & Elizabetha per Attorn. suum præd. & per Breve Reattachiament. præfat. Edwardus & Georgius &c. quod sint coram Justitiariis Domine Regine in prox. Assisas in prædicto Com. Eborum capiend. assign. apud præd. Castrum Eborum tenend. auditur. recordum & iudicium suum de Assisa præd. quæ fuit in Curia dictæ Domine Regine nunc apud Castrum præd. ita quod Assisa illa tunc sit ibi in eodem statu quo fuit in Curia dictæ Domine Regine nunc coram præfat. Johanne Clench & Francisco Gawdy Justitiar. ad Assisas, &c. apud præd. Castrum Eborum præd. die Lunæ sexto die Augusti Anno Regni dictæ Domine Regine nunc vicefimo quarto quo die Assisa præd. adjournat. fuit coram

coram eisdem Johanne Clench & Francisco Gawdy tunc Justitiariis &c. a præd. castro Eborum usque ad hospitium Justitiar. in Chancery-Lane London usque præd. diem Sabbati prox. post præd. Crastinum Animarum tunc prox. sequen. &c. Ad quas quidem prox. Assisas tent. apud Castrum Eborum præd. die Lunæ vicesimo nono die Julii Anno Regni dictæ Dominæ Reginæ nunc vicesimo quinto coram præfat. Johanne Clench & Francisco Rodes tunc Justitiar. ad Assisas &c. Ven. tam præd. Thomas Dowman & Elizabetha per Attorn. suum præd. quam præd. Edwardus Georgius &c. per præd. Thomam Hall Attorn. suum & Vic. viz. Thomas Wentworth Ar. modo mand. quod præd. Edwardus Vavasor Georgius &c. Et super hoc dies dat. est eis essendi coram Justitiar. dictæ Dominæ Reginæ nunc de Banco in Banc. apud Westm. in Crastino Animarum prox. futur. de audiend. & recipiend. quod eisdem Justitiariis dictæ Dominæ Reginæ de præd. Banco adtunc ibidem considerand. videbitur in hac parte eo quod iidem Johannes Clench & Franciscus Rodes Justitiar. ad Assisas &c. inde nondum &c. Ac Assisa præd. cum omnibus eam tangen. eisdem Justitiariis de Banco mittitur &c. (sequitur Warrant. Attorn. & breve de Resummons in Rotulo & tenor Brevis reattachiamenti & retorn. ejusdem brevis) Elizabetha &c. Vic. Eborum salutem Reattach. Edwardum Vavasor Ar. Georgium &c. vel ballivos suos si ipsi invent. non fuerint coram Justitiariis nostris ad Assisas in Com. tuo capiend. assign. apud Castrum Eborum in Com. tuo Eborum die Lunæ vicesimo secundo die Julii prox. futur. auditur. record. & judicium suum de Assisa novæ disseisinæ quæ fuit in Curia nostra apud Castrum præd. quam quidem Assisam Thomas Dowman Ar. & Elizabetha Uxor ejus ibidem arraign. versus eos de sex messuagiis trescent. acris terræ centum acris prati & ducent. acris pastur. cum pertin. in Spaldington &c. Ita quod Assisa illa tunc sit ibi in eodem statu quo fuit in Curia nostra coram Johanne Clench tertio Baron. de Scaccario nostro & Francisco Gawdy uno servien. nostrorum ad legem Justitiariis nostris ad Assisas in Com. tuo capiendas assignatis apud præd. Castrum Eborum die Lunæ sexto die Augusti proximo præterito quo die Assisa præd. certis de causis abinde adjornat. fuit

F f

coram

coram iisdem Justitiariis usq; hospitium Justitiar. in Chancery-Lane London. usque diem Sabbati prox. post Crastinum Animarum tunc prox. sequen. Et habeas ibi nomina pleg. & hoc breve Teste J. Clench apud Castrum Eborum undecimo die Martii Anno Regni nostri vicesimo quinto Frankland Cressy Infranominat. Edwardus Vavasor Georgius &c. nihil habent nec aliquis eorum aliquid habet in Balliva mea per quod possunt attach. vel aliquis eorum attach. potest nec habent nec aliquis eorum habet Ballivum vel Ballivos nec sunt invent. nec aliquis eorum est invent. in eadem Thomas Wentworth Ar. Vic. Et modo hic scilt. apud Westm. præd. ad hunc diem scilt. ad præd. Crastinum Animarum vener. tam præd. Thomas Dowman & Elizabetha per præd. Henricum Cressy Attorn. suum quam præd. Edwardus Vavasor Georgius &c. per Thomam Algar Attorn. suum & quia Justitiar. de Banco hic se advisare volunt de & super præmissis priusquam iudicium suum inde reddant dies dat. est partibus præd. hic usque in Octab. Sancti Hillarii (and so it was continued to Octab. Hillarii in the next Year) Ad quem diem hic ven. tam præd. Thomas Dowman & Elizabetha quam præd. Edwardus Vavasor Georgius &c. per Attornatos suos præd. & super hoc visis præmissis & per Justitiar. hic plene intellectis videtur eisdem Justitiariis hic quod prædicta indentura per præfat. Petrum Vavasor Ar. post præd. Recuperationem in forma præd. habitam & factam fuit bona & sufficien. in lege ad ducend. usus recuperationis præd. de tenementis præd. cum pertin. sicque eadem recuperatio de tenementis præd. cum pertin. in visu recognitor. præd. Assisæ posit. & in querela præd. per præfat. Andream Windsor Willielmum Vavasor &c. versus præd. Petrum Vavasor Ar. in forma præd. habit. fuit ad eisdem usus in prædicta Barra prædicti Edwardi Vavasor superius spec. modo & forma prout idem Edwardus in Barra sua præd. superius allegavit Ideo cons. est quod præd. Thomas Dowman & Elizabetha nihil capiant per breve suum præd. sed sint in misericordia pro falso Clamore suo & præd. Edwardus Vavasor & Georgius &c. eant inde sine die &c.

The

The C A S E.

AN Affise was brought against Edward Vavasor and others, for a Disseisin of the Demandants of their Freehold at Spaldington, &c. in several Houses and Lands there; all of the Tenants plead nul tort nul disseisin, which is the General Issue in Affise, except Edward Vavasor, and he pleaded in Bar that Peter Vavasor was seised in Fee of the Premises, and being so seised in Hillary Term Anno 15 Eliz. suffered a Common Recovery thereof, and avers that the same was to the Use of the said Peter for Life, without Impeachment of Waste, and afterwards to the Use of his Son in Tail-male; and for Default of such Issue, to the Use of the said Edward Vavasor, his Brother, for Life, and afterwards to the Use of his eldest Son in Tale-male, with divers Remainders over to several of his Brothers in like Manner; of which the last was Richard, and for want of Issue male of his Body, to the right Heirs of the said Richard for ever; then he sets forth, That these Uses were executed by the Statute 27 H. 8. and that Peter Vavasor died without Issue, and that Edward entered as in his Remainder; the Plaintiffs replied, and confessed the Recovery was suffered, but that it was to the Use of Peter Vavasor and his Heirs; and that after the Death of Peter, the Premises descended to Elizabeth, the Wife of Thomas Dowman, the Demandant, as Sister and Heir of Peter, and traversed that it was suffered ad usus in Barra prædicta Edwardi superius specificat. prout, &c.

Upon this Traverse the Parties were at Issue, and the Recognitors found a Special Verdict, viz. That Peter Vavasor was seised in Fee of the Premises, and suffered a Recovery thereof, as Edward Vavasor had before by his Plea alledged; and moreover, That by Indenture, bearing Date the first Day of February

bruary, but not executed till the 15th of the same Month, Anno 15 Eliz. he declared that the Meaning of all Parties at the Time of the Recovery was, That the said Recoverors should stand seised to the only Uses and Intents therein set forth and declared, and to no other Use, viz. to the Use of himself for Life, without Impeachment of Waste, and afterwards to his Issue in Tail-male, and for Default of such Issue, to Edward Vavasor for Life, without Impeachment of Waste, and afterwards to his Issue in Tail-male, with divers Remainders over; but whether an Indenture dated 1 Feb. and not executed till the 15th Day of February following, which was after the Recovery suffered, shall be sufficient to lead the Uses of the precedent Recovery petunt advisamentum, &c. and so made a General Conclusion, &c.

There were two Points made in this Case:

1. If the Indenture made after the Recovery was sufficient in Law to direct the Uses thereof?
2. Whether upon such a Special Issue taken upon the Traverse, the Recognitors could find a Special Verdict?

As to the first it was insisted, That immediately after a Common Recovery is suffered, the Law adjudges it to be to the Use of the Recoveror and his Heirs; if so, then the Uses being vested in Peter Vavasor and his Heirs immediately after the Execution of the Recovery, and before the Indenture was made, it shall never be afterwards divested by any subsequent Deed or Declaration he can make, so as to prejudice his Heirs; besides, it is absolutely necessary that every Declaration of Uses of Recoveries should be certain both in respect to the Persons, Lands, and Estate; and if it fail in either, then it is not a sufficient Declaration; but in the principal Case there is a failure in all those Things, which cannot be supplied by any subsequent Averment.

It was likewise argued that all Declarations of Uses ought to be compleat in themselves without any Manner of Relation to subsequent Deeds; because such Declarations being general for establishing Inheritances in Families, it shall never be intended that Men will leave them to be perfected by subsequent Acts, since they may die before they are compleated; neither could this Recovery be suffered to the Uses averred in the Plea; one of which was to the Use of Peter Vavasor for Life, without Impeachment of Waste, which is a Privilege a Man cannot have by Parol, but by Deed.

Then as to the Indenture it self, it raised no Use; and if so, it is only an Evidence to persuade the Jury that the Recovery was suffered to those Uses mentioned in the Indenture; but being subsequent to the Recovery, it is not sufficient in Law to direct any precedent Uses; besides, it would be very inconvenient if any such Thing should be allowed; for since no Time is limited when such Declarations shall be made, it may be done many Years after the Recoveries are suffered; and then it will defeat all immediate Estates and Interests made in the Land, which would be very injurious both to Purchasers and others.

But it was adjudged that this subsequent Indenture was sufficient to direct and declare the Uses of a precedent Recovery; for he who suffered the Recovery expressly declared in the said Indenture, That it was the true Meaning of all the Parties, at the Time when it was suffered, that the Recoverors should stand seised to the only Uses therein declared, and to no other Use: Now it would be very absurd to say, That notwithstanding this express Declaration, yet the Recovery was not suffered to these Uses, but to the Use of Peter Vavasor and his Heirs.

As to the second Point; it was resolved, That at Common Law the Jury might in all Actions and upon

all Issues joined find any Special Matter which is pertinent and tends to the Issue joined between the Parties, and that if there is any Thing doubtful to them in the Law, they may refer it to the Judgment of the Court.

This Case is reported by my Lord Coke in his 7th Reports ; and it is probable that the greatest Part of the Pleadings were drawn by him, because they are very artificial ; and there is more Variety in this Assize than in any other I could find, chiefly occasioned by Reason it was so long depending before Judgment was given, during which Time many Accidents interposed ; as the appointing new Judges to be at York Assizes, where the Issue was to be tried ; and then the Plague happening in London, the Judges could not come to Serjeant's Inn on the Day appointed to give Judgment, and the Term was adjourned from Westminster to the Castle at Hertford ; so that it was necessary to have a Re-attachment and Re-summmons for the Defendants to appear in the Court of Common Pleas to hear Judgment ; all which are set forth in the Pleadings ; and at last Judgment was given for the Defendant.

And here may be seen the Form of such a Judgment, which is in none of the Precedents before recited ; for in those the Judgment was given for the Demandants, but here it is that the Plaintiff nil capiat per Breve suum sed sit in misericordia pro falso clamore.

But certainly this Case could not so long depend, by Reason of any Difficulty in the Law upon either of those Points which were made upon this Special Verdict, viz. Whether the Uses of a precedent Recovery can be directed by a subsequent Deed for that Purpose ? And whether the Recognitors could give a Verdict at large upon the Issue taken on the Traverse ? For to argue the Negative in both Points, would be to dispute against common Experience, and the most elaborate Arguments a Lawyer could offer in such Cases would at
this

this Time be of no Manner of Use; for he could never hope to prevail for his Client, and as for himself, his Discourse would be rather accounted whimsical than learned.

Upon the whole Matter, it seems something strange that such Points as these should be debated even at that Time when this Case happened; for my Lord Coke tells us, That if a subsequent Deed could not lead the Uses of a former Recovery, it would shake a great many Securities in England; so that this was no new or difficult Point at that Time; and it was then as it hath been ever since generally known, that at Common Law the Jury might find a Special Verdict upon any Issue, and in any Action whatsoever: It is true, by the Statute of Westm. 2. cap. 30. it is given in an Assise, but that Statute was made in Affirmance of the Common Law; therefore something else was the Occasion why this Matter depended so long, and that may be the Importunity of great Lawyers concerned in the Cause, and probably my Lord Coke was one of them; it is what I have known done in other Cases where the Law hath been very plain, and where the adverse Party hath endeavoured to sink the Cause by the Weight of great Counsel, and sometimes it hath been attempted where the Counsel were only majores numero; but those are like Echo's, never silent as long as the same Sounds can be several Times repeated, and, to carry on the Similitude, they like Echo's soon become weak, and are no more heard.

The Entry of a Bill of Exceptions in an Assise.

AD quem diem coram Domino Rege & Domina Regina apud Westm. ven. tam præd. W. B. in propria persona sua quam præd. R. H. & E. C. in propriis personis suis. Et Recogn. Assisæ præd. exact. simil. ven.

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qui

qui ad veritatem de præmissis dicend. elect. triat. & jurat. existunt super quo. Edw. Ward Ar. Attorn. dicti Dom. Regis & dictæ Dominæ Reginae nunc Generalis & al. de Consilio præd. *W. B.* expert. in lege ex parte præd. *W. B.* ad promovend. & manutenend. Titulum ipsius *W. B.* ad officium præd. superius in narr. & record. præd. specificat. profer. in Cur. & ostendunt Justic. Cur. dicti Domini Regis & Dominæ Reginae hic & Recogn. præd. Literas Patent. præd. dicti Domini Caroli Secundi nuper Regis Angl. eidem Willielmo *B.* Et ulterius idem *E. Ward Ar.* & al. de consilio præd. *W. B.* ostend. justic. Cur. hic & Recogn. præd. quod officium præd. fuit & est ex dono & concessione Domini Regis hujus Regni Angliæ pro tempore existen. quodocunq; Officium præd. vacare contigerit. Et ad proband. & manutenend. jus præd. Domini nuper Regis Caroli Secundi tempore confession. earund. Literar. Paten. eidem *W. B.* ad concedend. Officium præd. eidem *W. B.* idem *W. B.* in evidenc. dedit justic. Cur. hic & Recogn. Assisæ præd. quendum Actum in Parlamento Domini Edwardi Tertii nuper Regis hujus Regni Angliæ Anno Regni sui decimo-quinto tent. confect. qui quidem Actus sequitur in hæc verba (*Recite the Act.*) Quas quidem allegation. ipsius *W. B.* ac materias præd. per ipsum *W. B.* in evidenc. Justic. & Recogn. Assisæ præd. ut præfertur dat. præd. Justic. Domini Regis & Dominæ Reginae ad placita coram ipsis Rege & Regina tenend. Assign. modo hic admittere allocare & recipere ut sufficien. ad proband. & manutenend Titulum ipsius *W. B.* ad officium præd. omnino recusant Ratione cujus Recogn. præd. super Sacramentum suum dicunt quod præd. *R. H. & E. C.* nullam injuriam fec. nec disseisiver. præd. *W. B.* de libero Tenemento suo præd. Et hoc, &c. Et pet. Justic. hic quod iidem Justic. exception. suas præd. allocare vellent & quod ad hanc Billam exception. præd. Sigill. sua secundam formam Statuti inde edit. & provis. apponant. Et super hoc ista præsen. Bill. exception. continen. in se allegation. præd. necnon materias ut præfertur in Evidenc. dat. per eosdem Justic. vis. & intellect. iidem Justic. huic Bill. Sigilla sua opposuer. dat. die

Anno Regni Domini Willielmi & Dominæ Mariæ Dei Gratia, &c. quinto.

Habere

*Habere facias Seisinam sur breve de Assisa
Nova Disseisinæ.*

ANna, &c. Vic. Midd. salutem. Cum N. W. Gen. in Cur. Domini Willielmi Tertii nuper Regis Angliæ, &c. coram ipso nuper Rege apud Westm. per breve ejusdem nuper Regis Assisæ Novæ Disseisinæ quam præd. N. W. arrainavit coram Domino nuper Rege apud Westm. versus W. S. Ar. ac per Justic. ejusdem Cur. recuperavit versus ipsum W. S. seisinam suam de Officio Mareschalli Mareschalsiæ dicti nuper Domini Regis coram ipso nuper Rege existen. cum pertin. in Paroch. Sanctæ Margaretæ Westm. in Com. nostr. Midd. per visum Recogn. Assisæ præd. unde idem, W. S. convict. est sicut per Record. & Proces. inde in Cur. nostra coram nobis reman. plenius liquet & apparet Ideo tibi præcipimus quod præfat. N. W. plenar. Seisinam de Officio Mareschalli Mareschalsiæ præd. cum pertin. sine dilatione habere fac. Et qualit. hoc breve nostrum fueris execut. constare fac. nob. apud Westm. a die Paschæ in quindecim dies ubicunq; &c. hoc breve nostrum nobis tunc remitten. Teste J. Holt Mil. &c.

*Sci. fa. ad revivend. Judic. in Assisa Novæ
Disseisinæ.*

ANna, &c. Vic. Midd. salutem Cum N. W. Gen. in Cur. Domini Willielmi Tertii nuper Regis Angliæ, &c. coram ipso nuper Rege apud Westm. per breve ejusdem nuper Regis Assisæ Novæ Disseisinæ quam præd. N. W. arrainavit coram dicto nuper Rege apud Westm. versus W. S. Ar. Ac per Judic. ejusdem Cur. recuperavit versus ipsum W. S. Seisinam suam de Officio Mar. Mareschalsiæ dicti nuper Domini Regis coram ipso nuper Rege existen. in Com. nostr. Midd. per visum Recogn. Assisæ præd. unde idem W. S. convict. est sicut per Record. & Proces. inde in Cur. nostr. coram nobis remanen, plenius liquet & apparet. Jamq; ex parte præd. N. W. in Cur. nostr. coram nobis accepimus quod
licet

licet Judic. præd. in forma præd. reddit. Executio tamen Judicii illius sibi adhuc restat faciend. Unde nobis supplicavit idem *N. W.* sibi de remedio suo congruo in hac parte provideri. Nosque in hac parte fieri volentes quod est justum tibi præcipimus quod per probos & legales homines de Balliva tua Scire fac. præfat. *W. S.* quod sit coram nobis apud Westm. die Sabbati prox. post Oct. Sci. Hill. ad ostend. si quid pro se hab. vel dicere sciat quare præd. *N. W.* Breve suum de Seisina de officio præd. cum pertin. juxta vim formam & effectum recuperation. præd. de & super judicio præd. habere non debeat si sibi viderit expediri, Et ulterius ad factur. & receptur. quod dicta Cur. nostr. coram nobis de eo adtunc & ibidem confid. in hac parte. Et habeas ibi tunc nomina eorum per quos ei scire feceris & hoc breve. Teste *J. Holt*, &c.

Sci. fa. in Assisa Novæ Disseisinæ pro Adm. pro dampnis adjud. in C. B. & Judic. ill. postea revocat. in B. R. & revocat. illa postea revocat. in Parliament.

Dominus Rex mand. Vic. Kanc. breve suum clausum in hæc verba, ff. Gulielmus Tertius Dei Gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Rex, Fidei Defensoris, &c. Vic. Canc. salutem Cum Assisa Novæ Disseisinæ nuper sum. fuit & capt. coram Edwardo Ward Capital. Baron de Scaccario nostro & Eldred. Lanceloto Lee Ar. ea vice associat. eidem Edwardo & Wilhelmo Gregory Mil. tunc uno Justic. nostr. ad placita in Cur. nostr. coram nobis tenend. assign. Justic. nostr. ad Assisas in Com. Kanc. capiend. assign. per formam Statut. &c. præsen. præfat. Wilhelmi Gregory non expectat. Virtute brevis nostri de Si non omnes, &c. apud Maidstone in Com. Kanc. per brev. nostr. int. Philippum O. Ar. & R. S. Gen. de libero tenemento in Maidstone in Com. Kanc. Record. & Procef. cujus quidem Assisæ per separal. Adjornament. præfat. Justic. ad Assisas ad Cur. nostram de Banco apud Westm. devener. Cumq; etiam præd.

præd. Philippus postea in eadem Cur. nostr. scilt. Termino Sci. Hillar. Anno Regni nostri octavo coram Georgio Treby Mil. tunc Capital. Justic. nostr. de Banco & Sociis suis tunc Justic. nostr. de Banco præd. per Conf. ejusdem Cur. recuperasset Seisinam suam versus præfat. Robertum de Officio Clerici Pacis in & pro præd Com. Kanc. per Vis. Recogn. Assisæ præd. & dampn. sua occasione. Disseisinæ præd. ultra Mis. & Custag. ill. ad 40 s. per recogn. præd. Asses. necnon 67 l. 15 s. 5 d. eidem Philippo ad requisition. suam per Cur. ill. de Incremento adjudicat. quæ quidem dampna in toto se attingunt ad quæ quidem record. & proces. post redition. Judic præd. in Cur. nostr. coram nobis certis de causis venire fecimus. Et Judic. ill. per eandem Cur. coram nobis revocat. fuit ut dicitur. Et quia in revocatione Judic. ill. coram nobis Error intervenit manifest. ad grave dampnum ipsius Philippi sicut ex querela sua accepimus. Nos Record. & Proces. præd. cum omnibus ea tangen. coram nobis in Parliament. nostr. venire fecimus. Postmodumq; scilt. die Lunæ tertio die Aprilis Anno Regni nostri undecimo conf. fuit per Cur. Parliament. præd. quod præd. Judic. in Cur. nostr. coram nobis præd. revocation. & adnullation. Judicii in Cur. nostr. coram Justic. nostr. de Banco præd. reddit. ob Error. in Record. & Proces. revocation. & adnullation. ejusdem Judicii compert. revocetur adnulletur & penitus pro nullo habeatur & quod præd. Judic. in Cur. nostr. coram Justic. nostris de Banco præd. in omnibus affirmetur. Et quod idem Philippus ad omnia que occasione revocation. & adnullation. ejusdem Judicii amisit restituatur Super quo Record. præd. necnon Proces. præd. in eadem Cur. Parliament. in Præmissis hab. remittuntur in Cur. nostr. coram nobis apud Westm. Cumq; etiam præd. Philippus postea scilt. septimo die ejusdem Mensis Aprilis Anno undecimo supradicto obiit intestat. post cujus mortem administratio omnium & singulorum bonorum & catal. jur. & credit. quæ fuer. præd. Philippi tempore mortis suæ per Thomam Providentia Divina Cantuar. Archiepiscopum totius Angliæ Primat. & Metropolit. apud Lond. vicesimo quarto die Mensis Aprilis Anno Domini Millesimo Sexcentesimo Nonagesimo nono cuidam Janæ Owen Vid. Relictæ præd. Philippi commissæ fuit prout per Litteras Administrat.

nistrat. ejusdem Archiepiscopi in Cur. nostr. coram nobis prolat. plene liquet. Ac jam ex parte ipsius Janæ in Cur. nostr. coram nobis accepimus quod licet Judic. in Cur. nostr. coram Judic. nostris de Banco præd. per Cur. Parliament præd. in omnibus affirmat. existit execution. tamen Judicii præd. sibi adhuc restat faciend. in retardation. Execution. Administration. præd. unde nobis supplicavit eadem Jana sibi de remedio suo congruo in hac parte provideri. Et nos in hac parte fieri volentes quod est justum tibi præcipimus quod per probos & legales homines de Balliva tua scire fac. præfat. Roberto quod sit coram nobis in Cr'o Ascension. Domini ubicunque tunc fuerimus in Anglia ad ostend. si quid pro se habeat vel dicere sciat quare præd. Jana Execution. suam versus eundem Robertum de dampnis prædictis habere non debeat juxta vim formam & effect. Judic. præd. in Cur. nostr. coram Justic. nostr. de Banco præd. reddit. si sibi viderit expediri. Et ulterius factur. & receptur. quod Cur. nostr. coram nobis conf. in hac parte. Et habeas ibi nomina eorum per quos ei scire feceris & hoc breve T. &c. Holt Colman Ad quem diem coram Domino Rege apud Westm. ven. præd. Jana in propria persona sua. Et Vic. Kanc. præd. viz. Johannes Amhurst Ar. ad diem ill. retorn. quod ipse Virtute brevis præd. ei direct. per R. T. and T. A. probos & legales Homines de Ball. sua Scir. fec. præd. R. S. quod sit coram Domino Rege ad diem præd. ubicunq; &c. ad ostend. &c. prout per brev. ill. sibi præcept. fuit. Et super hoc præd. Jana pet. execution. versus eund. R. S. de dampnis præd. sibi adjudicari, &c. Super quo præd. R. S. sic præmunit. & quarto die placiti solemnit. exact. in propria persona sua venit & pet. Judic. de brev. de Sci. fa. præd. quia dic. quod brev. de Sci. fa. præd. materiaq; in eodem content. minus sufficien. in lege exist. ad ipsam Janam execution. suam præd. versus præd. Robertum pro dampnis præd. habend. manutenend. ad quod quidem brev. idem R. necesse non habet nec per legem terræ tenetur aliquo modo respondere. Et hoc idem Robertus parat. est verificare Unde idem R. pet. Judic. de brev. ill. & quod præd. Jana ab executione sua ac dampnis præd. versus ipsum R. habend. præcludatur, &c. Et præd. Jana dic. quod ipsa per aliqua præallegat. ab executione sua de dampnis præd. versus

versus ipsum R. habend. præcludi non debet quia dic. quod brev. de Sci. fa. præd. materiaq; in eodem content. bon. & sufficien. in lege exist. ad ipsam Janam Execution. suam præd. versus præd. R. pro dampnis præd. habend. manutenend. quod quidem brev. de Sci. fa. materiamq; in eodem Content. eadem Jana parat. est verificare & probare prout Cur. &c. Et quia idem R. ad brev. ill. non respond. nec materiam in eodem Content. aliqualit. dedic. eadem Jana pet. Judic. & Execution. suam versus eundem R. de dampnis præd. sibi adjudicari, &c. Et quia Cur. dicti Domini Regis nunc de Judicio suo de & super præmissis reddend. nondum advisatur dies inde dat. est partibus præd. coram Domino Rege usq; ————— ubicunq; &c. de Judicio suo de Præmissis ill. eo quod Cur. dicti Domini Regis inde nondum, &c.

Subpœna.

Willielmus, &c. S. B. &c. Salutem Præcipimus vobis & cuilibet verumquod omnibus & singulis excusationibus quibuscunq; cessan. sitis & quilibet vestrum sit in propriis personis vestris coram Justitiariis ad Assisas in Com. Hereford. Capiend. Assign. die Sabbati, &c. prox. futur. ibidem ad testificand. veritat. scien. vestræ in quadam Assisa Novæ Disleisinæ ad tunc capiend. int. Gilb. H. Quer. & G. R. & W. D. tenent. de libero tenemento in Hereford. Et hoc nullatenus omittatis nec aliquis vestrum omittat Subpœna Centum Librarum, &c.

Fieri facias.

Willielmus, &c. Vic. Civit. Glouc. Salutem Cum A. S. in Cur. nostr. coram Justitiariis ad Assisas pro Civit. nostr. Glouc. præd. nunc hic tent. apud
K k Civit.

Civit. Glouc. præd. in Com. ejusdem Civit. coram A. B. & C. D. Justic. nostris ad Assisas in Civit. Gloucester. præd. Capiend. Assign. per quandam Assisam Novæ Disseisinæ recuperavit versus W. B. Ar. tam Seisinam suam de & in Officio Principal. Registrar. &c. in Civit. nostr. Glouc. præd. & Com. ejusdem Civit. per Vis. Recogn. Assisæ præd. quam etiam pro Dampnis suis quæ sustin. tam occasione disseisinæ præd. quam pro Missis & Custagiis suis ipsi circa Assisam suam præd. in ea parte apposit. unde idem W. convict. est sicut per record. inde in Cur. præd. plenius apparet Ideo vob. præcipimus quod eidem A. plenar. Seisinam de Officio præd. cum pertin. per Visum Recogn. præd. sine dilatione habere fac. Præcipimus etiam vob. quod de Bonis & Catallis præd. Willielmi in Balliva vestra fieri fac. pro dampnis Missis & Custagiis præd. in forma præd. recuperat. Et denar. ill. habeatis coram ad reddend. præfat. A. pro dampn. Missis & Custagiis suis præd. Et habeat. &c. Teste, &c.

Judgment in an Assise for the Office of Marshall of the King's Bench, by Non sum informat.

Placita coram Domina Regina apud Westm. Termino de Sanctæ Trinitatis Anno Regni Domine Annæ nunc Regine Magnæ Britannie &c. duodecimo, Rot. 189.

Midd. ff. **H.** M. & N. W. Gen. po. lo. suo Richardum Pearse Attorn. suum versus M. C. Jun. Ar. de placito Deb.

Midd. ff. M. C. Jun. po. lo. suo Johannem Tilghman Attorn. suum versus N. M. & N. W. Gen. in placito præd.

Midd. ff. Assisa ven. recognitur. si M. C. Jun. Ar. Injuste & sine Judicio disseisivit H. M. & N. W. Gen. de lib. tenemento suo in Paroch. Sanctæ Margarettæ

retta Westm. in Com. Midd. infra trigint. Annos jam ult. elaps. Et unde iidem Howell & Nicholaus per Richardum Pearse Attorn. suum Queruntur quod præd. Moses ipsos Howell & Nicholaum disseisivit de Officio Marecalli Marecalsiæ Dominæ Reginæ coram ipsa Regina existen. in Paroch. Sanctæ Margarette præd. Et pro titulo liberi tenementi de Officio præd. ac Assisæ præd. iidem Howell & Nicholaus dicunt quod Officium prædictum est & a tempore cuius contrar. memoria hominum non existit fuit Antiquum Officium pro Custodiend. & detinend. omnes tales prisionarios qual. per Cur. dictæ Dominæ Reginæ coram ipsa Regina vel per aliquos Justic. Cur. Dictæ Dominæ Reginæ coram ipsa Regina commiss. forent custod. alicujus Marecalli Marecalsiæ præd. pro tempore existen. & sub salva Custod. sua custodiend. Et quod divers. feod. eidem Officio Marecalli Marecalsiæ. præd. semper spectaver. & pertiner. & eidem Marecallo Marecalsiæ præd. pro tempore existen. solut. fuer. videlt. pro quolibet brev. dictæ Dominæ Reginæ de Errore Corrigend. in placito felonie portat. per aliquem Prisionar. qui fuisset vel esset Convict. de tali felonie & in Custod. alicujus Marecalli Marecalsiæ pro tempore Existen. detent. quoddam feod. quatuor Denar. legalis monetæ Magnæ Britannie Aceriam pro qualibet manucaption. cujullibet Prisionar. qui fuisset vel esset in Custod. Marecalli Marecalsiæ præd. & per eundem Marecallum Marecalsiæ pro tempore Existen. in præd. Cur. dictæ Dominæ Regnæ virtute brevis dictæ Dominæ Reginæ De Habeas Corpus eidem Marecallo Marecalsiæ præd. direct. al. feod. quatuor denar. similis legalis monetæ Magnæ Britannie & pro Dimission. (Anglice *Dismission*) alicujus Prisionar. pro debito vel dampnis extra Custod. Marecalli Marecalsiæ præd. pro tempore existen. al. feod. decem solid. similis legalis Monetæ hujus Regni Quodq; quidam Willielmus Lenthall Ar. decimo septimo die Januar. Anno Domini Millesimo septingentesimo apud Paroch. præd. in Com. præd. seisitus fuisset de præd. Officio Marecalli Marecalsiæ præd. in Dominico suo ut de feodo Et omnia feod. & proficua eidem Officio ut præfertur spectan. & pertinen. habuit recepit & gavisus fuit prædictusq; Willielmus de Officio præd. sic seisitus existen. postea scilt. eodem decimo septimo die Januar. Anno Domini Mille-

lesimo septingentesimo præd. apud Paroch. Sanctæ Margarette Westm. præd. in Com. præd. per quoddam Scriptum suum Sigillo ipsius Willielmi Lenthall Sigillat. ac in Cur. Domini Willielmi Tertii nuper Regis Angliæ coram dicto nuper Rege apud Westm. Termino Sci. Hillar. Anno Regni Domini nuper Regis duodecimo de Recordo debito modo irrotulat. ac in Cur. Dictæ Dominæ Reginæ coram ipsa Regina nunc residen. cum consensu præhonorabilis Caroli Bodville Comititis de Radnor secundam formam Statuti in hujusmodi Casu nuper edit. & provis. concessit præfat. Nicholao Hæredibus & Assignatis suis præd. Officium ac omnia ad Officium præd. spectan. & pertinen. ac totum Statum Jus Titulum Interesse Clam. & Demand. quæcunq; ipsius præd. Willielmi in ad vel ex Officio præd. habend. & tenend. Officium præd. cum pertin. præfat. Nicholao Hæred. & Assignatis suis ad ejus & eorum usum imperpetuum prout per eandem Concessionem hic in Cur. prolat. plenius liquet & apparet Virtute cujus quidem Concession. idem Nicholaus apud Paroch. præd. in Com. præd. devenit seisit. de Officio præd. cum pertin. in Dominico suo ut de feodo & omnia feod. & proficua ad Officium præd. spectan. & pertinen. habuit tenuit exercuit recepit & gavissus fuit prædictusq; Nicholaus de Officio præd. sic seisit. existen. postea scilt. decimo quinto die Junii Anno Domini Millesimo septingentesimo tertio apud Paroch. Sanctæ Margarette Westm. præd. in Com. præd. per quoddam Scriptum suum Sigillo ipsius Nicholai Sigillat. ac in Cur. dictæ Dominæ Reginæ coram ipsa Regina apud Westm. Termino Sanctæ Trinitatis Anno Regni dictæ Dominæ Reginæ secundo de Recordo debito modo irrotulat. ac in Cur. dictæ Dominæ Reginæ coram ipsa Regina nunc residen. cum Consensu ejusdem Caroli Bodville Comititis de Radnor secundam formam Statuti in hujusmodi casu nuper edit. & provis. concessit præfat. H. Hæredibus & Assignatis suis præd. Officium ac omnia ad Officium præd. spectan. & pertinen. ac totum Statum Jus Titulum interesse Clam. & Demand. quæcunq; ipsius Nicholai in ad vel ex Officio prædicto habend. & tenend. Officium præd. cum pertin. præfat. H. Hæredibus & Assignatis suis ad usum præd. Nicholai & H.M. Hæred. & Assign. suorum imperpetuum prout per eandem Concession. hic in Cur. prolat. plenius

plenius liquet & apparet Virtute cujus quidem Conces-
sion. iidem Nicholas & Howell apud Paroch. præd. in
Com. præd. devener. seisi de Officio præd. cum
pertin. in Dominico suo ut de feodo & omnia feoda
& proficua ad idem Officium spectan. & pertinen. (un-
de ipsi iidem N. & H. superius se modo queruntur dis-
seisi fore) habuer. tenuer. exercuer. & gavisi fuer. vi-
delt. apud Paroch. præd. in Com. præd. quousq; præd.
M. C. postea scilt. vicesimo sexto die Januar. Anno Dom.
1712, apud Paroch. præd. in Com. præd. ipsos N. & H.
inde injuste & sine Judicio disseisivit. Et hoc iidem N.
& H. parat. sunt verificare. Et inde petunt Assisam, &c.

Et præd. M. C. per J. T. Attorn. suum venit super *Non Informat.*
quo præd. N. & H. petunt quod præd. M. C. ad Nar-
rationem suam præd. respondeat & præd. Attorn. præd.
M. C. dicit quod ipse non est informat. per eundem M.
Magistrum suum de aliquo respons. per eundem M. eis-
dem N. & H. in loquela præd. demand. & nihil aliud
inde dicit in Barram sive præclusion. Action. præd. ipso-
rum Nicholai & Howell sed default. fecit — Ideo Con-
siderat. est quod præd. N. & H. recuperent versus præfat.
M. C. Seisinam suam Officii præd. cum pertin. per vi-
sum Recognitorum Assisæ præd. Et præd. M. C. in Mife-
ricordia, &c. Et petunt iidem N. & H. breve dictæ Do-
minæ Reginæ nunc de Habere faciend. eis plenar. seisi-
nam Officii præd. cum pertin. per Visum Recognito-
rum Assisæ præd. Vic. Com. Midd. præd. dirigend. Et eis
conceditur retorn. coram dicta Domina Regina apud
Westm. die Veneris prox. post tres sept. Sancti Michaelis
idem Dies dat. est præfat. N. & H. ibidem, &c. Ad
quem diem coram Domina Regina apud Westm. ven.
præd. N. & H. in propr. personis suis Et vic. Midd.
præd. non misit inde brev. præd. nec aliquid inde fecit
Ideo præd. N. & H. petunt al. brev. dictæ Dominae Re-
ginæ Vic. Com. præd. in forma præd. dirigend. Et eis
conceditur, &c. retorn. coram dicta Domina Regina
apud Westm. die Sabbati prox. post Octab. Sancti Hillar.
idem dies dat. est præd. N. & H. ibidem, &c. Ad quem
diem coram Domina Regina apud Westm. ven. præd.
N. & H. in propriis personis suis Et vic. Midd. præd.
non misit inde brev. præd. nec aliquid inde fecit Ideo
præd. N. & H. petunt al. brev. dictæ Dominae Reginae
Vic. Com. præd. in forma præd. dirigend. Et eis con-
ceditur,

ceditur, &c. retorn. coram dicta Domina Regina apud Westm. die Lunæ prox. post Crastin. Ascensionis Domini Idem dies dat. est præfat. N. & H. ibidem, &c. Ad quem diem coram Domina Regina apud Westm. ven. præd. N. & H. in propriis personis suis Et Vic. Midd. præd. videlt. F. F. Mil. & J. S. Mil. retorn. quod brev. præd. adeo tarde sibi deliberat, fuit ita quod propter temporis brevitat. Execution. inde facere non potuer. prout superius eis præcipitur Et super hoc præd. M. & H. petunt al. brev. dictæ Domina Regina Vic. Com. præd. in forma præd. dirigend. Et eis conceditur, &c. retorn. coram Domina Regina apud Westm. die Veneris prox. post Quinden. Sanctæ Trinitatis Idem dies dat. est præfat. N. & H. ibidem, &c. Ad quem diem coram Domina Regina apud Westm. ven. præd. N. & H. in propriis personis suis Et Vic. Midd. præd. non misit inde breve præd. nec aliquid inde fec. Ideo præd. N. & H. pet. al. breve dictæ Domina Regina Vic. Midd. præd. in forma præd. dirigend. Et eis conceditur, &c. retorn. coram Domina Regina apud Westm. Die Lunæ prox. post tres sept. Sancti Michaelis idem dies dat. est præfat. N. & H. ibidem, &c. Ante quem diem dicta Domina Anna nuper Regina Magnæ Britannia, &c. Diem suum clausit extrem. ad quem diem coram Domino Georgio nunc Rege Magnæ Britannia, &c. apud Westm. ven. præd. N. & H. in propriis personis suis Et Vic. Midd. præd. non misit inde breve præd. nec aliquid inde fec. Ideo præd. N. & H. petunt al. brev. dicti Domini Regis Vic. Midd. præd. in forma præd. dirigend. Et eis conceditur, &c. retorn. coram Domino Rege apud Westm. die &c. prox. post Octab. Sancti Hillarii Idem dies dat. est præfat. N. & H. ibidem, &c. Ad quem diem coram Domino Rege apud Westm. ven. præd. N. & H. in propriis personis suis Et Vic. Midd. præd. non misit inde brev. præd. nec aliquid inde fec. Ideo præfat. N. & H. petunt al. brev. dicti Domini Regis Vic. Midd. præd. in forma præd. dirigend. Et eis conceditur, &c. retorn. coram Domino Rege apud Westm. die Mercur. prox. post quinden. Paschæ idem dies dat. est præfat. N. & H. ibidem, &c.

Judg.

*Judgment in Ejection for the Marshal-
sea.*

*Placita coram Domina Regina apud Westm. de
Termino Sanctæ Trinitatis Anno Regni Domine
Annæ nunc Regine Magnæ Britannie &c.
duodecimo, Rot. 190.*

Sur. ff. **J**ohannes C. po. lo. suo Richardum Pearse At-
torn. suum versus M. C. Jun. nuper de Lon-
don. Ar. de placito transgr. & ejection. firmæ.

ff. M. C. Jun. nuper de London. Ar. po. lo. suo Jo-
hannem Tilghman Attorn. suum versus Johannem C. de
placito præd.

Sur. ff. M. C. Jun. nuper de London. Ar. Attach.
fuit ad respondend. Johanni C. de placito quare Vi &
Armis, &c. unum Messuagium cum pertin. in Paroch.
Sancti Georgii Southwark in Com. Sur. præd. quæ M.
H. & N. W. Gen. eidem Johanni dimiser. ad termi-
num qui nondum præteriit intravit & ipsum a firma sua
præd. ejecit & al. enormia ei intulit ad grave damp-
num ipsius Johannis & contra Pacem Domine Regine
nunc Et unde idem Johannes per Richardum Pearse
Attorn. suum queritur quod cum præd. H. M. & N. W.
primo die Januar. Anno Regni Domine Annæ nunc
Regine Magnæ Britannie, &c. undecimo apud Paroch.
præd. in Com. præd. dimississent eidem Johanni Mes-
suagium præd. cum pertin. habend. & tenend. præd.
Johanni & Assignatis suis a vicesimo primo die Decem-
bris tunc ult. præterit usq; plen. finem & term. septem An-
norum extunc prox. sequen. plenar. complend. & finiend.
Virtute cujus quidem dimissionis idem Johannes in Mes-
suagium præd. cum pertin. intravit & fuit inde possessio-
nat. ipsoq; Johanne sit inde possessionat. existen. præd.
M. postea scilt. eodem primo die Januar. Anno un-
decimo supradicto Vi & Armis, &c. in Messuagium
præd. cum pertin. quæ præfat. H. M. & N. W. eidem
Johanni in forma præd. dimiser. ad termin. præd. qui
nondum præteriit intravit & ipsum Johannem a firma
sua

sua præd. ejecit expulit & amovit Et al. enormia, &c. Ad grave dampn. &c. Et contra Pacem dictæ Dominiæ reginæ nunc unde idem Johannes dic. quod ipse deteriorat. est & dampnum habet ad valent. viginti libr. Et inde produc. sectam, &c.

Non informat.

Et præd. M. per Johannem Tilghman Attorn. suum ven. & defend. vim & injur. quando, &c. Et præd. Johannes pet. quod præd. M. ad narrationem suam præd. respondeat super quo idem Attorn. præd. M. dic. quod ipse non est informat. per eundem M. magr. suum de aliquo respons. eidem Johanni in loquela præd. dand. Et nihil aliud inde dicit in Barram sive Præclusion. Action. præd. Johannis per quod idem Johannes remanet versus præfat. M. inde indefens. — Ideo conf. est quod præd. Johannes recuperet versus præfat. M. possession. termini sui præd. de & in Messuagio præd. cum pertin. acetiam quod præd. Johannes dampna sua versus præfat. M. occasione transgr. & ejection. præd. recuperare debeat super quo præd. Johannes gratis hic in Cur. in propria persona sua remittit præfat. M. omnia quæcunq; dampn. mis. & Custag. quæ præfat. Johanni in hac parte adjudicari possint vel debeant. Ideo idem M. de dampn. misis & custag. ill. acquiet. exist. & eat inde sine die, &c. Et super hoc præd. Johannes pet. breve Dominiæ Reginæ Vic. Com. præd. dirigend. de habere faciend. ei plenar. possessioni. Termini sui præd. adhuc ventur. de & in Messuag. præd. cum pertin. Et ei conceditur, &c. Retorn. coram Domina Regina a die Sancti Michaelis in tres sept. ubicunque, &c. idem dies dat. est præfat. Johanni, &c. Ad quem diem coram Domina Regina apud Westm. ven. præd. Johannes in propria persona sua Et vic. Com. præd. non misit inde brev. præd. nec aliquid inde fec. Ideo præd. Johannes pet. al. brev. dictæ Dominiæ Reginæ Vic. Com. præd. in forma præd. dirigend. & ei conceditur, &c. retorn. coram Domina Regina ubicunq; &c. Idem dies dat. est præfat. Johanni, &c. Ad quem Diem coram Domina Regina apud Westm. ven. præd. Johannes in propria persona sua Et Vic. Com. præd. videlt. Josephus Wandell Ar. retorn. quod brev. præd. adeo tarde sibi deliberat. fuit ita quod propter temporis brevitat. ill. exequi non potuit Et super

hoc præd. Johannes pet. al. brev. dictæ Dominae Reginae Vic. Com. præd. in forma præd. dirigend. & ei conceditur retorn. coram Domina Regina ubicunque, &c. Idem dies datus est præfato Johanni, &c. Ad quem Diem coram Domina Regina apud Westm. ven. præd. Johannes in propria persona sua Et Vic. Com. præd. non misit inde brev. præd. nec aliquid inde fec. Ideo præd. Johannes pet. al. brev. dictæ Dominae Reginae Vic. Com. præd. in forma præd. dirigend. & ei conceditur, &c. retorn. coram Domina Regina a die Sancti Michaelis in tres sept. ubicunq; &c. idem dies dat est præfat. Johanni, &c. Ante quas quidem tres sept. Sancti Michaelis dicta Domina Regina nuper Regina diem suum clausit extremum Ad quem diem coram Domino Georgio nunc Rege Magnæ Britanniae, &c. apud Westm. ven. præd. Johannes in propria persona sua Et Vic. Com. præd. non misit inde brev. præd. nec aliquid inde fec. Ideo præd. Johannes pet. al. brev. dicti Domini Regis Vic. Com. præd. in forma præd. dirigend. & ei concedit. &c. retorn. coram Domino Rege in Octab. Sancti Hillarii ubicunque, &c. idem dies dat. est præfat. Johanni, &c.

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A T A.

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Chief Matters

Contained in the foregoing

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